

United States
Circuit Court of Appeals
For the Ninth Circuit.

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK, and
EMILE K. BOISOT, Trustees,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Montana.

Filed

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F. D. Monckton;
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of the Solicitors of Record.

R. F. GAINES, Esq., of Butte, Montana,

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GEO. T. BABGS, Esq., of Stevensville, Montana,

Solicitors for Defendants and Appellants.

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of Chicago, Ill.,

HENRY C. STIFF, Esq., of Missoula, Montana,

Solicitors for Plaintiffs and Appellees.

[1*]

*In the District Court of the United States in and for
the District of Montana.*

No. 71.—IN EQUITY.

FIRST TRUST AND SAVINGS BANK, and

EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-

PANY, F. C. WEBSTER, Trustee in Bank-

ruptcy of the BITTER ROOT VALLEY

IRRIGATION COMPANY, HANS B.

KNUDSEN and CAROLINE KNUDSEN,

HELEN E. CARTER, MAX BENNETT,

HENRY BENNETT, JOSEPH ZITKA and

W. G. PARKS,

Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

BE IT REMEMBERED, that on April 8, 1916, complainants filed their bill of complaint herein, which bill of complaint, except those portions thereof omitted by stipulation and mentioned in the praecipe for transcript herein, is in the words and figures following, to wit: [2]

*In the District Court of the United States, for the
District of Montana.*

IN EQUITY.

FIRST TRUST AND SAVINGS BANK, and
EMILE K. BOISOT, Trustees,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in Bank-
ruptcy of the BITTER ROOT VALLEY
IRRIGATION COMPANY, HANS B.
KNUDSEN and CAROLINE KNUDSEN,
HELEN E. CARTER, MAX BENNETT,
HENRY BENNETT, JOSEPH ZITKA and
W. G. PARKS,

Bill of Foreclosure.

To the Judge of the District Court of the United
States for the District of Montana:

First Trust and Savings Bank, a corporation or-
ganized and existing under the laws of the State of
Illinois, and a citizen of said state, and Emile K.
Boisot, of Chicago, Illinois, and a citizen of said
state, by leave of this court first had and obtained,
bring this, their bill, against Bitter Root Valley Irrig-
ation Company, a corporation organized and exist-

ing under and by virtue of the laws of the State of Montana, and a citizen of said state, F. C. Webster, of Missoula, in the County of Missoula, and State of Montana, and a citizen of said State of Montana, as Trustee in Bankruptcy of said Bitter Root Valley [3] Irrigation Company; Hans B. Knudsen and Caroline Knudsen, who are citizens of the State of Minnesota, and Helen E. Carter, Max Bennett, Henry Bennett, and Joseph Zitka, who are citizens of the State of Iowa, and W. G. Parks, who is a citizen of the State of Montana; and thereupon your orators complain and say as follows:

I.

Your orator, First Trust and Savings Bank, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen of said state; and your orator, Emile K. Boisot, is a citizen and resident of the State of Illinois.

II.

Bitter Root Valley Irrigation Company is a corporation organized and existing under and by virtue of the laws of the State of Montana, and is a citizen of said State of Montana. F. C. Webster is a citizen and resident of the State of Montana, and is now in possession of the entire properties of the Bitter Root Valley Irrigation Company, as trustee in bankruptcy, appointed by this Honorable Court by its order entered on the 23rd day of February, 1916, in the matter of the Petition of Bitter Root Valley Irrigation Company to be adjudged bankrupt.

III.

On or about the 1st day of June, 1909, and on various days and dates thereafter as hereinafter set forth, the Bitter Root Valley Irrigation Company, by authority of its Board of Directors [4] and with the concurrence and consent of the owners and holders of seventeen thousand two hundred (17,200) shares, out of the total of twenty thousand shares constituting the entire capital stock of said company, issued its negotiable bonds to the aggregate amount of one million three hundred and seventy-six thousand dollars (\$1,376,000.00) par value, consisting of eleven hundred and seventy-six (1,176) bonds for the principal sum of one thousand dollars (\$1,000.00) each, and numbered consecutively from 1 to 479 inclusive, 501 to 647 inclusive, and 751 to 1,300 inclusive, and four hundred (400) bonds for the principal sum of five hundred dollars (\$500.00) each, and numbered consecutively from 1301 to 1700 inclusive, said bonds dated as of July 1, 1909, and becoming due and payable as follows:

Bonds Nos.	1 to 100,	due January 1, 1914.
Bonds Nos.	101 to 200,	due January 1, 1915.
Bonds Nos.	201 to 314,	due January 1, 1916.
Bonds Nos.	315 to 350,	due January 1, 1916.
Bonds Nos.	351 to 374,	due January 1, 1917.
Bonds Nos.	375 to 427,	due January 1, 1917.
Bonds Nos.	428 to 437,	due January 1, 1917.
Bonds Nos.	438 to 453,	due January 1, 1917.
Bonds Nos.	454 to 479,	due January 1, 1917.
Bonds Nos.	501 to 540,	due January 1, 1918.
Bonds Nos.	541 to 586,	due January 1, 1918.

Bonds Nos. 587 to 596, due January 1, 1918.

Bonds Nos. 597 to 647, due January 1, 1918.

Bonds Nos. 751 to 1180, due January 1, 1919.

Bonds Nos. 1181 to 1250, due January 1, 1919.

Bonds Nos. 1251 to 1296, due January 1, 1919.

Bonds Nos. 1297 to 1300, due January 1, 1919.

Bonds Nos. 1301 to 1400, due January 1, 1919.

Bonds Nos. 1401 to 1501, due January 1, 1919.

Bonds Nos. 1502 to 1521, due January 1, 1919.

Bond No. 1522, due January 1, 1919.

Bonds Nos. 1523 to 1700, due January 1, 1919.

by the terms of which bonds the Bitter Root Valley Irrigation Company acknowledged itself to owe and for value received [5] promised to pay to the bearer thereof the sum of one thousand dollars (\$1,000.00) by each of said bonds, numbered from 1 to 479 inclusive, 501 to 647 inclusive, and 751 to 1300 inclusive, and the sum of five hundred dollars (\$500.00) by each of said bonds numbered from 1301 to 1700 inclusive, in gold coin of the United States of America, of the then standard of weight and fineness, at the office of the First Trust and Savings Bank, in the City of Chicago, in the State of Illinois, or at the office of the First National Bank, in the City of New York, in the State of New York, without deduction for any tax or taxes, which the said company, or the trustees under the mortgage or deed of trust given to secure the same, as hereinafter set forth, might be required to pay or retain therefrom under any present or future law of the United States, or of any state, county, or municipality therein, and the said company therein and thereby agreed to pay

such tax or taxes, and to pay interest upon all of said bonds from their respective dates until paid, at the rate of six (6) per centum per annum, payable semi-annually on the first days of January and July in each year, upon presentation and surrender of the interest coupons thereto annexed. The form and tenor of said bonds are set forth at large in the mortgage or deed of trust hereinafter set forth and referred to.

IV.

On or about the first day of June, 1909, said Bitter Root Valley Irrigation Company, being thereunto duly authorized by the action of its Board of Directors, and with the concurrence and consent of the owners and holders of seventeen thousand two hundred (17,200) shares, out of the twenty thousand (20,000) shares which constitute the entire capital stock of said company, duly made, executed, acknowledged and delivered [6] to your orators, as trustees, its certain mortgage or deed of trust, dated the first day of June, 1909, wherein and whereby, in order to secure the due and punctual pro rata payment of said several bonds for the aggregate principal sum of one million three hundred seventy-six thousand dollars (\$1,376,000.00) and the interest thereon, at any time issued and outstanding, and to secure the performance and observance of all of the covenants and conditions in said mortgage or deed of trust contained, said Bitter Root Valley Irrigation Company granted, bargained, sold, aliened, remised, released, assigned, pledged, mortgaged, transferred, conveyed, confirmed and set over unto your

orators in trust, as therein provided, and their successors in trust, and assigns, with full power of succession to and enjoyment of the rights and privileges, including the right of possession, of said Bitter Root Valley Irrigation Company, all that certain real estate and property situated in the county of Ravalli, in the State of Montana, which is set forth and described in said mortgage or deed of trust, as being granted, bargained, sold, aliened, remised, released, assigned, pledged, mortgaged, transferred, conveyed, confirmed and set over, and subject to all the terms and conditions of said mortgage or deed of trust, which is hereinafter set forth at large, and your orators hereby ask leave to refer to the description of the real estate and property therein contained with the same force and effect as if said description were here inserted and specifically set forth, and also certain land contracts and agreements concerning the purchase of state lands, as set forth and described in said mortgage or deed of trust, which is hereinafter set forth at large, and to which for a full description of said land contracts and agreements, and the lands covered thereby, your orators ask leave to refer as aforesaid, and also all the right, title and interest of the said Bitter Root Valley Irrigation Company in and to all contracts, agreements [7] and options for the purchase or sale of lands, made, entered into or acquired by the said company, or which said company may or might make, enter into or acquire, including contracts for the purchase of certain lands and real estate situated in Ravalli County, Montana, which is also set forth and de-

scribed in said mortgage or deed of trust hereinafter set forth at large, and to which for a full description thereof your orators beg leave to refer as aforesaid, and also the entire system of irrigation works owned by the said Bitter Root Valley Irrigation Company, as set forth and described in said mortgage or deed of trust, hereinafter set forth at large as aforesaid, and to which for a full description thereof your orators ask leave to refer to as aforesaid; and also all those certain water rights, situated in Ravalli County, Montana, as set forth and described in said mortgage or deed of trust, and to which as the same is hereinafter set forth at large your orators ask leave to refer as aforesaid for a full description thereof, together with all canals, ditches, laterals, weirs, headgates, pipe-lines, syphons, bridges, trestles, dams and flumes owned or thereafter acquired or constructed by the Bitter Root Valley Irrigation Company and the said company's entire irrigation system together with all power, privileges, easements and appurtenances then or thereafter used in connection therewith or thereto belonging, including all purchase money mortgages and the notes thereby secured, now or thereafter acquired by the said company, taken in part payment for lands theretofore or thereafter sold by the said company, to the extent and amount that said mortgages and the notes thereby secured are required to be deposited with the Trustees as provided in Section 9 of Article Three and in Section 3 of Article Seven of said mortgage or deed of trust, respectively, and also any and all other property of every name and nature (not-

withstanding the same was not particularly described [8] in said indenture) at the date of said mortgage owned or thereafter acquired by the company, except as therein excepted, including all lands and rights, estates or interests therein then owned or thereafter purchased or acquired by the company, together with all appropriations of water or water rights then owned or that thereafter might be acquired by the company.

And it was the true intent of the parties to said mortgage or deed of trust that it should convey all of the property therein described, together with all buildings, structures and improvements of every kind and character, which were at the date thereof upon, or might thereafter be placed upon said mortgaged property, and the income, rents, issues and profits therefrom, and any and all other property of every name and nature owned or thereafter acquired by the said Bitter Root Valley Irrigation Company, whether in said mortgage or deed of trust particularly described or not, including all lands and rights, estates or interests therein then owned or thereafter purchased or acquired by the said Bitter Root Valley Irrigation Company, and the income, rents, issues and profits therefrom, together with all appropriations of water or water rights then owned or thereafter acquired by the said company.

To have and to hold the said described property, real and personal, rights, interests, privileges, easements, franchises, choses in action, water appropriations, dams, reservoirs, canals, ditches, laterals, and system of irrigation works then owned or thereafter

acquired by said company, with all the easements, privileges and appurtenances thereunto belonging, unto your orators, its, his and their successors in trust, and assigns, but in trust, nevertheless, for the equal and proportionate benefit and security, severally and respectively, of all and every of the holders at any time of the bonds above mentioned [9] and the interest coupons appertaining thereto without preference or priority or distinction as to lien or otherwise of any one bond over any other bond, by reason of priority in the execution, delivery or negotiation thereof, or by reason of the purpose of the issuance thereof, so that each and every of said bonds should have under and by said mortgage or deed of trust the same right, lien and privilege as every other bond issued, and so that every such bond with the interest coupons thereto belonging should, subject to the terms of the said mortgage or deed of trust, be secured thereby equally and proportionately with every other bond, as if all of said bonds had been executed, certified, delivered and negotiated simultaneously with the execution and delivery of said mortgage or deed of trust, it being intended and provided thereby that the lien of said mortgage or deed of trust should take effect from the date thereof, without regard to the date of the actual issue, sale or disposition of said bonds, as if upon such date, all of said bonds had been actually issued, sold and delivered, and were in the hands of innocent holders for value for the uses and purposes and upon the terms and conditions in said mortgage or deed of trust more fully set forth.

Said mortgage or deed of trust, date June 1, 1909, as executed by the parties thereto, together with the names of the subscribing witnesses and the several certificates of acknowledgment thereof, thereunto appended, was and is in the words and figures following, to wit: [10]

THIS INDENTURE, made and entered into as of the First day of June, in the year of our Lord, one thousand nine hundred and nine, by and between the Bitter Root Valley Irrigation Company, hereinafter called the "Company," party of the first part, and the First Trust and Savings Bank (sometimes hereinafter for brevity called the "Bank") and Emile K. Boisot, of Cook County, Illinois, hereinafter called the "Trustees," party of the second part, Witnesseth:

THAT WHEREAS, the said Trustee, the First Trust and Savings Bank, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its office in the City of Chicago, County of Cook and State of Illinois; and

WHEREAS, the Trustees have full power and authority to take and held the property and to accept and undertake the trusts hereinafter particularly described and recited; and

Power of Trustees to undertake the trusts.

WHEREAS, the Company is a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal

and registered office in the Town of Hamilton, Ravalli County, Montana, and also having an office

Power of Company to issue bonds and execute mortgage.

in said City of Chicago, and has full power and authority, under said laws and its articles of incorporation, to borrow money

and issue, pledge, and dispose of its negotiable coupon bonds therefor to the amount and for the purposes hereinafter stated, and in order to secure the payment of said bonds, with the interest thereon, to pledge and convey by way of mortgage or deed of trust its property, rights, privileges, and franchises; and

WHEREAS, the Company has ac-

Property rights and contracts of Company.

quired and now owns the real estate, land contracts and agreements, water-rights, canals, flumes, dams, irrigation works, mortgages, contracts, rights, franchises, privileges and other property hereinafter mentioned and described; and

[11]

WHEREAS the Company in purchasing and acquiring said property and in constructing, extending and equipping said canals, flumes, dams and irrigation works, has incurred a large amount of indebtedness which is now outstanding and unpaid, and has also incurred additional obligations for the completion of said canals, flumes, dams and irrigation works; and

WHEREAS, it is necessary for the Com-

Necessity and purpose of bond issue.

pany to create and incur a bonded indebtedness in the amounts hereinafter stated, for

the purpose of providing funds with which to pay the present outstanding indebtedness of the Com-

pany, to complete and extend the Company's system of irrigation works, to develop the Company's property, including its lands, and to acquire additional property, including lands and to pay for lands heretofore contracted for by the Company or its assignors, capable of being irrigated by or from the Company's irrigation works and to acquire any other property or to construct any other works within the Company's corporate objects and powers; and

WHEREAS, the Board of Directors of the Company (with the concurrence and consent and by the direction of the owners and holders of 17,200 shares out of the 20,000 shares, which constitute the total capital stock of the Company, authorized and outstanding, expressed by their votes at a stockholders' meeting, duly called and held for the purpose)

Authorization
of the stock-
holders and
directors of
the Company
to issue
bonds.

pose) by resolutions duly adopted, have authorized and directed, subject to the provisions and conditions hereinafter set forth,

the creating and incurring of a bonded indebtedness by the Company for the purposes aforesaid, to the amount or amounts and in the manner hereinafter provided; and by said resolutions have directed and provided that said bonds shall be negotiable coupon bonds, numbered consecutively from 1 upwards and of the following denominations, respectively: bonds numbered from 1 to 1300, both inclusive, one thousand (1000) dollars each; bonds numbered from 1301 to 1700, both [12] inclusive, five hundred (500) dollars each; and bonds numbered from 1700 upwards of such denomination or denominations as the Board of Directors of the Com-

pany shall hereafter determine; that said bonds shall be executed in the name and on behalf of the Company by its president or vice-president under its corporate seal, and attested by its secretary, and each of the interest coupons attached to said bonds shall be executed by the engraved facsimile signature of the treasurer of the Company; that said bonds, numbered from 1 to 1700, both inclusive, shall bear date of July 1st, A. D. 1909, and shall be due and payable as follows, to wit:

Bonds numbered 1 to 100, both inclusive,
Bond ma-
 turities. on January 1, 1914.

Bonds numbered 101 to 200, both inclusive, on January 1, 1915.

Bonds numbered 201 to 350, both inclusive, on January 1, 1916.

Bonds numbered 351 to 500, both inclusive, on January 1, 1917.

Bonds numbered 501 to 750, both inclusive, on January 1, 1918.

Bonds numbered 751 to 1700, both inclusive, on January 1, 1919.

Bonds numbered from 1701 upwards shall bear such date or dates and shall be due and payable on such date or dates as the Board of Directors of the Company shall hereafter determine.

That said bonds shall bear interest from their date until paid at the rate of six per cent per annum, payable semi-annually on the first days of January and July in each year, which installments of interest, to date of maturity of principal, shall be evidenced by proper coupons attached to each bond; that both the

principal of and interest on said bonds shall be payable in gold coin of the United States of

Bond details.

America, of the present standard of weight and fineness at the [13] office of the First Trust and Savings Bank, in the City of Chicago, in the State of Illinois; or, at the option of the holder, at the office of the First National Bank, in the City of New York, in the State of New York; that each of said bonds, and the Trustee's certificate to be endorsed thereon, and each of the said interest coupons shall be in substantially the following forms, respectively, to-wit:

Form of bonds.

(Form of Bond.)

No. ———

\$——

UNITED STATES OF AMERICA.

State of Montana.

Bitter Root Valley Irrigation Company.

First Mortgage Six Per Cent. Gold Bond.

Know All Men by These Presents: That the Bitter Root Valley Irrigation Company, a corporation duly organized and existing under and by virtue of the laws of the State of Montana, hereinafter called the "Company," acknowledges itself to owe, and for value received hereby promises to pay to bearer the sum of ——— Dollars on the First day of January, A. D. 19—, with interest thereon from the date hereof until paid at the rate of six per centum per annum payable semi-annually on the First days of January and July in each year, as evidenced by and upon the presentation and surrender of the annexed interest coupons as the are severally matured. Both the principal of and the interest on this bond are

payable in gold coin of the United States of America, of the present standard of weight and fineness, at the office of the First Trust and Savings Bank in the City of Chicago, in the State of Illinois, or at the office of First National Bank in the City of New York, in the State of New York, without deduction for any tax or taxes, which the Company or the Trustees may be required to pay or retain therefrom under any present or future law of the United State or of any state, county or municipality therein, and the Company hereby agrees to pay such tax or taxes.

This bond is one of a series of First Mortgage Gold [14] Bonds issued and to be issued under and in pursuance of and all equally secured by a first mortgage or trust deed of indenture dated June 1st, 1909, duly executed by the Company to the First Trust and Savings Bank and Emile K. Boisot of the City of Chicago, Illinois, as Trustees, to which reference is hereby made for a description of the property, rights, privileges and franchises *mortgage*, and pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, the rights of the Company to redeem certain of said bonds before maturity and the terms and conditions of such redemption, the amount to which the total issue of said bonds is limited, and the terms and conditions upon which said bonds are secured and are to be issued—all with the same effect as if the provisions of said indenture were herein set forth.

The holder of this bond shall have no recourse for the payment thereof, or the indebtedness evidenced

thereby, or the interest thereon, or any part thereof, to any individual liability imposed by statute or otherwise upon any stockholder, officer or director of the Company; all such liability being hereby expressly waived by such holder, and by accepting this bond each successive holder assents and agrees to this provision.

Each of the bonds secured by the above-mentioned mortgage or deed of trust, maturing on or after January 1st, 1915, is redeemable before maturity as and in the manner in said mortgage or deed of trust provided, at the option of the Company, upon payment by the Company to the holder thereof, or to said the First Trust and Savings Bank, Trustee, or its successor in trust, for the time being, for the benefit of such holder, of the par thereof together with a premium of three per centum and all interest then accrued thereon, as is more fully stated and set forth in said indenture. In case of such prepayment all interest upon the principal thereof shall forthwith cease, and any and all obligations for such interest maturing thereafter shall become and shall be null and void.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the execution of the certificate hereon endorsed of the said the First Trust and Savings Bank, Trustee, under the said indenture.

IN WITNESS WHEREOF, the Bitter Root Valley Irrigation [15] Company has caused this bond to be signed by its President or Vice-presi-

dent, under its corporate seal, and attested by its Secretary, and the interest coupons hereto attached to be executed by the engraved facsimile signature of its Treasurer, as of the 1st day of July, A. D. 1909.

BITTER ROOT VALLEY IRRIGATION
COMPANY,

By _____,
President.

Attest:

_____,
Secretary.

Form of
Trustee's
certificate.

(Form of Trustee's Certificate.)

This bond is one of the bonds described in the within mentioned indenture.

FIRST TRUST AND SAVINGS BANK,
TRUSTEE,

By _____,
Trust Officer,
Treasurer.

Form of in-
terest
coupons.

(Form of Coupon.)

No. _____ \$_____

On the First day of _____, A. D. 19—, the Bitter Root Valley Irrigation Company will pay to bearer, at the office of the First Trust and Savings Bank, in the City of Chicago, Illinois, or at the office of the First National Bank, in the City of New York in the State of New York, _____ Dollars in United States Gold Coin, of the present standard weight and fineness, without deduction for taxes, being six months' interest then due on its First Mortgage Gold Bond, dated July 1st, 1909, Numbered _____; unless such bond shall sooner have been

called for payment, as stated in said bond and in the mortgage or deed of trust therein mentioned.

Treasurer.

and

WHEREAS, the Board of Directors of the Company (with the concurrence and consent of the owners and holders of 17,200 shares out of the 20,000 shares which constitute the entire capital stock of the Company, authorized and outstanding, [16] expressed by their votes at a stockholders' meeting duly called and held for the purpose as aforesaid), by resolution duly adopted has authorized and directed that for the purpose of securing the payment of the said bonds and of the interest coupons thereto belonging according to the tenor and effect thereof, as hereinabove set forth, the Company shall and do make, execute, acknowledge, and deliver to the Trustees a mortgage or deed of trust substantially in the form of this indenture; and

WHEREAS, all things necessary to happen, be done and performed to make said bonds when certified by the Bank, Trustee, and issued, the valid, binding, negotiable obligations of the Company, and this indenture a valid mortgage to secure the payment thereof, have happened, and have been done and performed in regular and due form and time as required by law;

NOW, THEREFORE, This Indenture Witnesseth: That in consideration of the premises and of the acceptance or purchase by the holders thereof of bonds issued under this in-

Authorization
of mortgage
or trust deed.

Performance
of conditions
preliminary
to issue and
mortgage.

Granting
clause.

denture, and of the sum of one dollar to it duly paid by the Trustees at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of said bonds at any time issued and outstanding, according to their tenor and effect, and in order to secure the observance and performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which said bonds shall be issued, received and held—the Company, party of the first part hereto, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, assigned, pledged, mortgaged, transferred, conveyed, confirmed and set over, and by these presents does grant, bargain, sell, alien, remise, release, assign, pledge, mortgage, transfer, convey, confirm and set over unto the Trustees, party of the second part, its, his, [17] and their successors and assigns forever, with full power of succession to and enjoyment of the privileges and franchises, including the right of possession of the Company:

1.

Description
of mortgaged
property. The following described real estate, situated in Ravalli County, Montana, and known and described as follows, to wit:
(Here follows description of property.) [18]

2.

Contracts for
purchase of
state lands.

Land contracts and agreements concerning the following state lands, situated in Ravalli County, Montana, to wit:

(Here follows description of property.) [20]

3.

Contracts for
purchase of
other lands.

All the right, title and interest of the Company in and to all contracts, agreements, and options for the purchase or sale of lands, made, entered into, or acquired by the Company, or which the Company may make, enter into or acquire, including contracts for the purchase of the following lands situated in Ravalli County, Montana, to wit:

(Here follows description of property.) [22]

4.

Irrigation
works and
canal system.

The entire system of irrigation works owned by the Company, consisting of the dam constructed by the Company in said Ravalli County, Montana, at the outlet of Lake Como into Rock Creek, for the purpose of impounding the flood waters of said Lake Como; the water course from said Lake Como through the channel of said Rock Creek to the diverting dam of the Company, constructed at a point at or near Bean's saw mill, and about one and one-quarter miles from said Lake Como, for the purpose of diverting the waters from said Lake Como and said Rock Creek into the Company's canal, all in said Ravalli County, Montana; the canal of the Company now constructed and being constructed extending from said diverting dam northeasterly to the Bitter Root River, thence across

the said river by a pipe line or inverted syphon, thence along or near the western base of the range of mountains on the easterly side of the Bitter Root Valley, thence northerly in a direction generally parallel with the said Bitter Root River, to a point at or near Eight-Mile Creek, being a distance of approximately seventy-five miles, all in said Ravalli County, Montana, together with the flumes, pipe-lines, or syphons, bridges or trestles, constructed or being [24] constructed for carrying said waters and other waters in and along said canal, including the right of way of said canal as the same is now constructed, being constructed, or surveyed, on and over and running through the following lands, to wit: (Here follows description of property.) [25]

5.

All the following described water rights Water rights. situated in Ravalli County, Montana, now owned by the Company consisting of the rights of the Company to the use of the waters of Lake Como, Rock Creek, Lost Horse Creek, Skalkaho Creek, Willow Creek, Burnt Fork Creek and Three-Mile Creek, including the flood waters impounded and to be impounded in the dam constructed at the outlet of said Lake Como into said Rock Creek, to wit: (Here follows description of property.) [26]

6.

All canals, ditches, laterals, weirs, head- Entire irrigation system. gates, pipe-lines, syphons, bridges, trestles, dams and flumes now owned or hereafter acquired or constructed by the Company and the Company's entire irrigation system, together with all power privi-

leges, easements, and appurtenances now or hereafter used in connection therewith or thereto belonging, expressly excepting from the lien of this indenture, however, all horses, mules, wagons, buggies, automobiles, implements, tools and machinery, including the steam shovels, steam engines, cars, track, steam railroad equipment and all other goods, and material, now or hereafter owned, used or leased by the Company. [27]

7.

Purchase money mortgages owned by Company. All purchase money mortgages and the notes thereby secured, now owned or hereafter acquired by the Company, taken in part payment for lands heretofore or hereafter sold by the Company, to the extent and amount that said mortgages and the notes thereby secured are required to be deposited with the Trustees as provided in Section 9 of Article Three and in Section 3 of Article Seven hereof, respectively.

8.

General and after-acquired property clause. Any and all other property of every name and nature (notwithstanding the same is not now particularly described in this indenture) now owned or hereafter acquired by the Company, except as herein excepted, including all lands and rights, estates or interests therein now owned or hereafter purchased or acquired by the Company, together with all appropriations of water or water rights, now owned or that hereafter may be acquired by the Company.

Habendum. To Have and to Hold, all and singular, the real and personal property, rights, in-

terests, privileges, easements, franchises, choses in action, water appropriations, dams, reservoirs, canals, ditches, laterals and system of irrigation works above described and hereby conveyed or intended so to be, and now owned or hereafter acquired by the Company, together with all the easements and appurtenances thereunto belonging unto the Trustees, its, his and their successors and assigns:

But in Trust, Nevertheless, for the equal
Trust. and proportionate benefit and security, severally and respectively, of all and every the present and future holders of the bonds and interest coupons issued or to be issued under and secured by this indenture; and for the enforcement of the payment of said bonds and coupons when due, according to their tenor and [28] effect, and for the performance of and compliance with the covenants and conditions of this indenture, without preference, priority, or distinction as to lien or otherwise, of any one bond over any other bond by reason of priority in the execution, delivery, or negotiation thereof, or by reason of the purpose of the issuance thereof, and so that each and every bond issued and to be issued as aforesaid shall have, under and by this indenture, the same right, lien, and privilege as every other bond of the issue; and so that every such bond with the interest coupons thereto belonging shall, subject to the terms hereof, be secured hereby equally and proportionately with every other bond, as if all such bonds had been executed, certified, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security

of this indenture shall take effect from the date hereof without regard to the date of the actual issue, sale, or disposition of said bonds as if upon such date all of said bonds had been actually issued, sold and delivered and were in the hands of innocent holders for value.

And It Is Hereby Expressly Covenanted and Declared, That all such bonds, with coupons for interest thereon are to be issued, certified, delivered, received, used, and negotiated, and that the mortgaged and pledged premises, properties and franchises are to be held by the Trustees subject to and upon the further covenants, conditions, terms, uses, and trusts as follows, to wit:

ARTICLE ONE.

Section 1. From time to time the bonds

Execution,
certification
and delivery
of bonds.

to be issued under and secured hereby shall be executed by the Company as set forth in

the preamble hereof, and by it shall be delivered for certification to the said Bank, Trustee; and thereupon the said Trustee shall certify and deliver the same as hereinafter provided. [29]

In case any of the officers, who on behalf

Change in
officers of the
Company.

of the Company shall have signed or sealed any of the bonds issued under this indenture,

shall die or shall cease to be such officer of the Company before the bonds so signed and sealed, shall have been actually certified and delivered by the said Bank, Trustee, or issued, nevertheless, upon the request of the Company, such bonds may be certified, delivered and issued as herein provided, as if the

person who signed and sealed such bonds had not died or ceased to be such officer of the Company; and also any bond may be signed and sealed on behalf of the Company by such persons as at the actual date of the execution of the bonds shall be the proper officers of the Company, although at the time of the date of the bond such persons may not have been officers of the Company. The coupons attached to each bond shall be executed by the engraved facsimile signature of the present treasurer, or of any future treasurer of the Company, and for that purpose the Company may adopt and use the engraved facsimile signature of any treasurer, notwithstanding the fact that at the time when such bonds shall actually be certified and delivered or issued he shall have ceased to be treasurer of the Company.

The said Trustee shall not certify or deliver any bond hereby secured until all coupons thereon then matured shall have been detached and canceled.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinabove recited, duly executed by the said Trustee, shall be secured by this indenture or shall be entitled to any lien or benefit hereunder. No such bond or any coupon thereunto belonging shall be valid or become obligatory for any purpose until it shall have been authenticated by the execution of such certificate endorsed on such bond. Every such certificate of the said Trustee upon any bond executed by the Company shall be conclusive and the only evidence that the bond so certified was duly issued hereunder and

is entitled to the benefit of the trust hereby created.

[30]

Total bond issue. Section 2. The total amount of bonds that may be issued under and secured by this indenture is limited to the following amounts:

—to the amount of \$30 per acre for each acre of land owned and hereafter acquired by the Company. (1) For each and every acre of land owned by the Company as of the date of recording this indenture, or thereafter purchased or acquired by the Company, said bonds not exceeding in the aggregate, an amount equal to thirty (30) dollars per acre, for each and every acre of land so owned, purchased or acquired by the Company, may be issued, and shall be certified and delivered as provided in Sections 8 and 10 of Article Three hereof; and,

—and also to the amount of \$30 for each \$42 of purchase money mortgages owned. (2) For each forty-two (42) dollars of the principal of the notes secured by purchase money mortgages, hereinbefore mentioned (each of which shall constitute a first lien to an amount not exceeding forty-two (42) dollars per acre on the premises so mortgaged), owned by the Company as of the date of recording this indenture, and delivered to the Trustees as hereinafter provided, said bonds, not exceeding in the aggregate an amount equal to thirty (30) dollars for each and every forty-two (42) dollars of the principal of said notes may be issued and shall be certified and delivered as provided in Section 9 of Article Three hereof.

Certified copy of resolution of Board of Directors to be furnished Trustee. Before the said Bank, Trustee, shall certify and deliver said bonds, or any of them, the Company shall furnish to the said Trustee a duly certified copy of the said resolu-

tion of its Board of Directors, expressly authorizing and directing the execution, certification and delivery of said bonds, and undertaking that the same are to be issued and used solely to pay the present outstanding indebtedness of the Company, to complete and extend the Company's system of irrigation works, to develop the Company's property including its lands, to acquire additional property, including lands and the payment for lands heretofore contracted for by the Company or its assignors, capable of being irrigated from the Company's system of irrigation works, or to acquire any other property or [31] to construct any other works within the corporate objects and powers of the Company.

Such resolution, evidenced as aforesaid, shall, subject to the provisions hereinafter in Sections 8, 9 and 10 of Article Three hereof specified, be deemed and shall be taken to be full authority and direction to the said Bank, Trustee, for its certification and delivery of such bonds hereunder.

Section 3. In case any bond issued hereunder with the coupons thereto appertaining, shall become mutilated or be destroyed, the Company, in its discretion, may execute, and thereupon the said Bank, Trustee, shall certify and deliver a new bond of like tenor and date, including coupons, bearing the same distinctive number or numbers, in exchange and substitution for and upon cancellation of the mutilated bond and its coupons, or in lieu of and substitution for the bond and its coupons so destroyed. In case of destruction, the applicant for a substituted bond shall furnish to the

Replacing
bonds mutilated or
destroyed.

Company and to the said Trustee evidence of the destruction of such bond and its coupons, and of the ownership thereof, which evidence shall be satisfactory to the Company and to the said Trustee; and said applicant shall also furnish indemnity satisfactory to the Company and to the said Trustee.

Section 4. Until the bonds to be issued ^{Temporary} under and secured by this indenture, including _{bonds.} the bonds numbered from 1701 upwards, can be prepared and engraved, the Company may execute, and upon its request the said Bank, Trustee, shall certify and deliver, in lieu of such engraved bonds and subject to the same provisions, limitations and conditions, printed or lithographed bonds substantially of the tenor of the bonds to be issued as hereinbefore provided, except that every such temporary bond shall bear upon its face the words "Temporary Bond, exchangeable for engraved bonds," and shall recite that it is one of a series of temporary first mortgage gold bonds of like date and tenor and is exchangeable for [32] engraved coupon bonds for the aggregate principal sum thereof, and of like maturity, as in this section provided. Said temporary bonds shall be numbered from 1 upwards, and shall be of the denomination or denominations fixed by the Board of Directors of the Company, and shall have only the first coupon attached. Upon surrender of any such temporary bond for exchange, the Company, at its own expense, shall execute and deliver to the said Trustee, and upon cancellation of such surrendered temporary bond said Trustee shall certify and deliver in exchange therefor, engraved

bonds with interest coupons thereto attached, of the numbers noted on said temporary bond, and in the form of the denomination hereinbefore prescribed, and until so exchanged such temporary bond shall be entitled to the same security and rights as the engraved bonds to be issued hereunder.

Section 5. The Company may at its op-
Redemption of bonds. tion pay, redeem and discharge any of the bonds issued under and secured by this indenture, maturing after January 1st, 1915, by paying in cash the principal thereof at par, together with a premium of three per centum thereof and also all interest accrued at the time fixed for the prepayment, as follows:

Bonds maturing January 1st, 1916, January 1st, 1917, and January 1st, 1918, respectively, on any interest payment date before maturity, on or after January 1st, 1915; bonds maturing January 1st, 1919, on any interest payment date before maturity; bonds maturing after January 1st, 1919, on such interest payment date or dates before maturity as the Board of Directors of the Company shall hereafter determine.

(1) The Company shall exercise said option and give notice of any proposed redemption thereunder as follows:

Whenever the Board of Directors of the
Notice of. Company shall desire to redeem any of said bonds, then subject to redemption as aforesaid, they shall, prior to the delivery of the notice hereinafter provided for, adopt a resolution setting forth the amount of bonds (at their par value) desired to be

redeemed, [33] and specifying the numbers of the bonds so to be redeemed, beginning with the lowest number of the maturity or respective maturities which, or a part of which, respectively, the Board of Directors of the Company shall desire to redeem; and a certified copy of such resolution shall be delivered to said Bank, Trustee, and also to Trowbridge & Niver Co. (Incorporated) of Chicago, Illinois. The Company shall, not less than thirty (30) days prior to the date fixed for such prepayment and redemption, deliver to said Bank, Trustee, and also to said Trowbridge & Niver Co. (Incorporated), a certified copy of said resolution, together with written notice of its election to make such prepayment and redemption. Such notice shall state that upon presentation of said bonds with all coupons belonging thereto—both matured and unpaid and subsequently maturing—to the said Trustee, such designated bonds, will be paid in cash at par, with a premium of three per centum upon the principal, together with all interest accrued to the date so fixed for prepayment.

(2) Upon delivery of said notice and certified copy of said resolution to said Bank, Trustee, and to said Trowbridge & Niver Co. (Incorporated) each and every bond designated therein shall become and shall be due and payable at the date specified in such notice, together with all interest obligations which shall have accrued upon said date, anything in this indenture or in any bond or interest coupon or coupons contained to the contrary notwithstanding; and after the date of pay-

ment so specified, if the deposit hereinafter provided for shall have been made, no interest shall accrue upon or with respect to any bonds so designated, nor shall any coupon representing any such subsequently accruing interest, be of any force or effect. The Company and the Trustees, upon the deposit by the Company of the proper amount with the said Bank, Trustee, for the benefit of the holders of the bonds designated in said notice for prepayment and redemption, shall be privileged to consider said bonds as redeemed [34] from such holders. No such deposit shall draw interest, and every bond and coupon for the redemption of which any such deposit shall have been made, shall thereafter be excluded from any participation in the lien and security afforded by this indenture, and the holder thereof shall look for payment solely to said deposit in the hands of the said Trustee, which shall be used by said Trustee in the payment thereof upon the presentation and delivery to it of said bond, together with all unpaid coupons thereto belonging.

All bonds prepaid or redeemed under the provisions of this section, with all coupons thereto belonging, shall be forthwith canceled and surrendered to the Company.

Section 6. Nothing in this indenture or
Remedies
 confined to
 parties and
 bondholders. in the bonds issued hereunder, expressed or implied, is intended or shall be construed to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy, or claim under or in respect of this

indenture, or under any covenant, conditions, or provisions herein contained; all the covenants, conditions, and provisions herein being intended to be, and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

Collection
and applica-
tion of
funds from
pledged
securities.

Section 1. The Bank, Trustee, shall be entitled to collect and receive the principal or any part thereof of any and all of the securities hereby mortgaged and pledged, as the same becomes due and payable; the Trustees may employ either Cobe & McKinnon, of the City of Chicago, Illinois, or the Assets Realization Company of the City of Camden, New Jersey, or such other person or corporation as the Trustees may select as their agent in making such collection, either [35] before, during or after any default under this indenture. The Trustees shall apply the moneys so collected and received, first, towards the payment of the next installment of interest maturing on said bonds, second towards the payment of the principal of any of said bonds maturing by their terms on said interest payment date and, third, the residue thereof, if any, towards the prepayment and redemption of bonds issued under and secured by this indenture as follows: whenever there shall accumulate in the hands of the Bank, Trustee, as aforesaid money in excess of the amount of any installment of interest or of the principal and interest thereon of the bonds secured hereby to be paid within six calendar months thereafter, such excess moneys shall, upon the re-

quest of the Company, evidenced by a certified copy of a resolution of the Board of Directors of the Company, delivered to the Trustees not less than thirty (30) days prior to the date fixed in said resolution for prepayment or redemption, be used and employed in the prepayment or redemption of bonds as provided in said resolution; said resolution shall specify the interest payment date on which redemption is to be made and shall also designate bonds sufficient to absorb said excess moneys, then subject to redemption, which the Board of Directors of the Company shall desire to redeem; a certified copy of said resolution shall also be delivered by the Company to the said Trowbridge & Niver Co. (Incorporated) not less than thirty (30) days prior to the date fixed for such prepayment and redemption; the provisions of subdivision (2) of Section 5 of Article One of this indenture shall apply to the redemption of bonds by the Trustees under the provisions of this Article Two.

Section 2. The Company shall be entitled to collect, receive and retain all interest accruing upon the securities, hereby mortgaged and pledged, and to receive from the Bank, Trustee, the interest coupons attached to any of said securities, at [36] any time within thirty (30) days prior to the maturity of said coupons, until such time as the Company shall have made default or defaults in the performance of any of the terms, conditions and covenants of this indenture to be performed by the Company, and written notice of such default shall

Company shall collect and retain interest on its purchase money mortgages, so long as not in default.

have been given by the Trustees to the Company or shall have been given by the holders of not less than five (5) per cent, in amount of the bonds then outstanding and secured by this indenture to the Trustees and the Company; in event of any such default or defaults upon the part of the Company and written notice thereof, as aforesaid, the Company, during the continuance of such default or defaults, shall not be entitled to collect, receive or retain any of the interest on the said securities hereby mortgaged and pledged, or to receive from the Trustees the interest coupons attached to said securities or any of them, and the Trustees thereafter and during the continuance of such default or defaults shall require all interest maturing upon the securities mortgaged and pledged by this indenture to be paid to them direct, and shall retain and collect all said coupons.

ARTICLE THREE.

The Company covenants as follows:

Section 1. That duly and punctually it will pay the principal of and interest on every bond issued under and secured by this indenture at the dates and the places and in the manner mentioned in such bonds and coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes which the Company or the Trustees may be required to pay or retain therefrom under or by reason of any present or future law of the United States or of any state or county or municipality or

Covenants of
Company.

—to pay
bonds and
interest.

other governmental subdivision therein, and that it will pay such tax or taxes. The interest on the bonds [37] shall be payable only upon presentation and surrender of the several coupons for such interest, as they respectively mature, and when paid such coupons shall forthwith be canceled and returned to the Company.

Section 2. That the lien of this mortgage or trust deed is a first and prior lien upon all the property and franchises hereinabove described, granted, mortgaged and pledged; that it will allow no lien to be created or to be filed upon any portion of its said property and franchises; and that it will at all times keep and preserve the lien of this mortgage or trust deed as the first, prior and only lien upon each and every part of its real and personal property hereinabove described, and hereby granted, mortgaged and pledged, and upon which a lien is hereby created; and that duly and punctually it will perform each and every of its contracts with any settler or other person for the furnishing or supplying of water or power from its said irrigation and reservoir system, or for the sale of lands, and each and every of the covenants and agreements contained in its contracts and agreements concerning state lands, and will duly perform every duty imposed upon it by law, in such manner that the prior lien of this mortgage or trust deed shall never be displaced or endangered.

Section 3. That it will, on demand of the Trustees, do all acts necessary or proper to keep valid the lien created hereby, and that at any

—to maintain priority of lien of mortgage.

—to make further assurance.

future time and as often as may be necessary, it will, on reasonable demand of the Trustees, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, conveyances, assignments, transfers and assurances in the law for the purpose of subjecting to the lien and operation of this indenture any and all property and rights in respect to which the bonds secured hereby are issued, and for, in all respects, effectuating the intention of these presents, and for duly conveying, assigning and confirming unto [38] the Trustees all and singular the hereditaments and premises, estates and property hereby mortgaged or pledged, or intended so to be, or which the Company may hereafter become bound to convey or assign to the Trustees, as the Trustees shall reasonably require; that it will diligently preserve the rights and franchises granted to or conferred upon it by the laws or ordinances of the state, city, town or municipality wherein any of its property is or shall be situated; and that it will at all times keep and maintain its canals and irrigation and other works in thorough repair, working order and condition, and that it will, from time to time, make all needful and proper repairs and replacements so that the business of the Company may at all times be properly conducted.

Section 4. That from time to time it will ^{to pay} pay and discharge all taxes, assessments _{taxes,} and governmental charges (the lien whereof would be prior to the lien hereof), lawfully imposed upon the premises or property subject to this indenture,

or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustees in respect to said premises or property, so that the lien and priority of this indenture shall be fully preserved at the cost of the Company without expense to the Trustees or the bondholders; provided, however, that the Company shall have the right, by legal proceedings, conducted in good faith, to contest any such tax, assessment or governmental charge, and pending such contest may delay or defer the payment thereof.

—to employ bonds for specific purpose authorized and place proceeds in special fund.

Section 5. That it will not issue, use, negotiate, sell or dispose of any bonds hereby secured to an amount or in any manner, or for any purpose other than in accordance with the provisions of this indenture; and that as rapidly as said bonds are issued, used, negotiated, sold, or disposed of it will place the proceeds derived therefrom or obtained thereon, in a separate fund to be designated "First Mortgage Bond [39] Fund," which shall be used solely for the purposes or any of them mentioned in Section 2 of Article One hereof.

—to render annual itemized statements to Trustees.

Section 6. That it will, on or before the fifteenth day of January of each year during the life of any of the bonds issued under and secured by this indenture, file with the Trustees an itemized statement, signed and sworn to by the president, vice-president or secretary of the Company, setting forth, for the period of the preceding calendar year:

(1) The number of said bonds issued, sold, pledged or negotiated, and the number then outstanding and the amount realized therefrom or obtained thereon and placed in said "First Mortgage Bond Fund" mentioned in Section 5 of this Article Three;

(2) The character and amount of construction work done in the preceding calendar year, with the actual cost thereof, and whether and to what extent mechanics' liens have attached to the property of the Company on account of such construction work;

(3) The description and location of the lands acquired or contracted to be purchased by the Company in the preceding calendar year, together with the amount paid therefor or thereon; and attached to such statement shall be a certificate of counsel learned in the law, that the Company has acquired good and merchantable title to the lands so acquired, or that the contract so made is legally sufficient, as the case may be.

(4) The description and location of the lands sold or contracted to be sold by the Company in the preceding calendar year, together with the amount paid or contracted to be paid therefor or thereon; and in case of deferred payment, how the same is evidenced and secured.

(5) The amount disbursed during the preceding calendar year from the said "First Mortgage Bond Fund" aforesaid, and the balance remaining therein at the date of said statement. [40]

Section 7. That at all times hereafter, upon the written request of the Trustees, it will furnish and deliver to the Trustees,

—to render financial statements to Trustees on request.

as often and in such form as may be required by them, a statement in writing, attested by the signatures of its president or vice-president and of its treasurer, showing accurately the financial condition of the Company, the character, amount and location of lands owned by it, and the general condition, with respect to state of completion or incompleteness and repair of its irrigation works or system.

Certification
of bonds
issued on
land owned
by Company
at date of
recording
this mort-
gage.

Section 8. That prior to the certification of the bonds or any part thereof authorized by Paragraph (1) of Section 2, Article One hereof, the Company shall deliver to the Trustees, the certified copy of the resolution provided for in Section 2 of Article One hereof, and a statement made by the President, Vice-President or Secretary of the Company, under oath, setting forth the number of acres of land capable of being irrigated by or from the Company's irrigation works owned by the Company in fee simple (not including state lands and other lands, which the Company has contracted to purchase or in which the Company has an interest, but to which the Company does not hold title in fee simple) as of the date of recording this indenture, together with a certificate of counsel learned in the law, to be designated by said Trowbridge & Niver Co. (Incorporated) that the Company, as of said date, held good title to said lands free and clear of all liens or incumbrances except the lien of this indenture and taxes not due. Upon the delivery by the Company to the Trustees of the above mentioned statement and certificate, and after the delivery of the copy

of said resolution, the said Bank, Trustee, shall forthwith certify and deliver to the Company or upon its order, such an amount of said bonds as the Company may in writing request, not exceeding in the aggregate, however, an amount, at par, equal to Thirty (30) Dollars per acre for each and every acre of land so owned by the Company as of said date as shown by said sworn [41] statement made by the President, Vice-President or Secretary of the Company; the said Bank, Trustee, shall thereupon certify and deliver as aforesaid any bonds of any maturity or maturities, which the Company shall in writing designate, not exceeding in the aggregate the amount of bonds authorized by this Section 8, to be certified and delivered.

Certification
of bonds
on the
purchase
money mort-
gages owned
by Company
at date of
recording
this mort-
gage.

Section 9. That prior to the certification of the bonds authorized by Paragraph (2) of Section 2, Article One hereof, the Company shall deliver to the Trustees, duly assigned and endorsed to said Bank, Trustee, or its order, purchase money mortgages, and the notes thereby secured, each of which mortgages shall constitute a first lien on the premises covered thereby, to an amount or amounts not exceeding Forty-two (42) Dollars per acre, as specified in said Paragraph (2) of Section 2, Article One hereof, together with a certified copy of the resolution provided for in Section 2 of Article One hereof, a certificate of counsel learned in the law to be designated by said Trowbridge & Niver Co. (Incorporated) that such mortgages and the notes hereby secured, and so delivered to the Trustees, with the

endorsement or stipulation thereon, constitute a first lien on the said premises covered thereby, and a statement made by the President, Vice-President or Secretary of the Company, under oath, setting forth the aggregate amount of said purchase money mortgages and the aggregate number of acres of land covered by said mortgages. Upon the delivery by the Company to the Trustees of said purchase money mortgages and notes and said certificate of counsel, designated as aforesaid, and said sworn statement, and after the delivery of the copy of said resolution, the said Bank, Trustee, shall forthwith certify and deliver to the Company or upon its order, in addition to the bonds authorized and directed to be certified and delivered in accordance with the provisions of Section 8 of this Article Three, such an amount of said bonds as the Company may in writing request, not exceeding in the aggregate, however, [42] an amount, at par, equal to Thirty (30) Dollars for each Forty-two (42) Dollars of the principal of said notes secured by said purchase money mortgages, as shown by said sworn statement; the said Bank, Trustee, shall certify and deliver, as aforesaid, any bonds of any maturity or maturities remaining uncertified and unissued, which the Company shall in writing designate, not exceeding in the aggregate the amount of bonds authorized by this Section 9 to be certified and delivered.

In event the aggregate amount of the unpaid notes secured by said purchase money mortgages shall exceed the amount of Forty-two (42) Dollars per

acre as aforesaid, the lien thereof in excess of said amount of Forty-two (42) Dollars per acre, shall by appropriate endorsement or stipulation on said note, or notes, evidencing such excess, be made secondary and subordinate to the lien of said notes secured by said mortgages to the amount of not to exceed Forty-two (42) Dollars per acre; and constituting a first lien as aforesaid; and when so endorsed, as constituting a secondary lien as aforesaid, said note, or notes, representing such excess, shall be exhibited to the Bank, Trustee, and may then be retained by the Company free from the lien of this indenture. In event the said purchase money notes, constituting a first lien upon said mortgaged premises and delivered to and retained by the Trustees as aforesaid, shall exceed the amount of Forty-two (42) Dollars per acre as aforesaid, then upon the payment to the Trustees of said notes, constituting a first lien and delivered to the Trustees as aforesaid, the excess thereof, over and above the said sum of Forty-two (42) Dollars per acre, shall upon written request, be paid over to the Company.

Excess of purchase money mortgage notes over \$42 per acre, to be secondary in lien and retained by the Company.

Section 10. That prior to the certification of the bonds authorized by Paragraph (1) of Section 2, Article One hereof to be issued for lands purchased or acquired by the Company after the date of recording this indenture (including [43] state lands and other lands, which the Company had theretofore contracted to purchase or in which the Company had an interest on said date), the Company shall deliver to the Trus-

Certification of bonds issued on after acquired lands.

tees the certified copy of the resolution provided for in Section 2 of Article One hereof and a statement by the President, Vice-President or Secretary of the Company, under oath, setting forth the number of acres of lands so purchased or acquired by the Company, for which no bonds have been issued as herein provided, together with a certificate of counsel learned in the law that the Company on the date of said statement held good title to said land, free and clear of all liens and encumbrances, except the lien of this indenture and taxes and assessments not due. Upon the delivery by the Company to the Trustees of the above mentioned statement and certificate, and after the delivery of the copy of said resolution, the said Bank, Trustee, shall forthwith certify and deliver to the Company, or upon its order, such an amount of said bonds, as the Company may in writing request, not exceeding in the aggregate, however, an amount, at par, equal to Thirty (30) Dollars per acre for each acre of land so acquired or purchased by the Company as shown by said statement; the said Bank, Trustee, shall thereupon certify and deliver, as aforesaid, any bonds of any maturity, or maturities, remaining uncertified and unissued, which the Company shall in writing designate, not exceeding in the aggregate the amount authorized by this Section 10 to be certified and delivered.

ARTICLE FOUR.

Section 1. No coupon belonging to any bond hereby secured, which in any way at or after maturity shall have been trans-

ferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from [44] this indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons and interest obligations not so transferred or pledged.

Section 2. In case (1) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of ninety (90) days, or in case (2) default shall be made in the payment of the principal of any bond hereby secured, or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Company, and any such last mentioned default shall have continued for the period of ninety days after written notice thereof shall have been given to the Company by the Trustees or by the holders of five per cent in amount of the bonds then outstanding and hereby secured—then and in each and every such case the Trustees personally, or by their agents or attorneys, may enter into and upon and take full possession of the canals, ditches, reservoirs and all property, rights and franchises hereby mortgaged and pledged, or intended so to be, and hold, use, manage, maintain and operate the same, and collect and receive all moneys and revenues arising from such possession and man-

Entry by
Trustees on
Company's
default.

agement, and may exclude the Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said irrigation works and other premises, either personally, or by their superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the Trustees at the expense of the trust estate, from time to time, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements to said irrigation works and other premises as to them may seem judicious; and after deducting [45] the ex-

Application
of revenues
by Trustees
in possession.

penses of operating said irrigation works and premises, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges upon the said premises and property, or any part thereof, as well as just and reasonable compensation for their own services and for all agents, clerks, servants and other employees by them properly engaged and employed, the Trustees shall apply the moneys and revenues arising as aforesaid as follows:

In case the principal of any of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest on the overdue installments at the rate of six per centum per annum; such payments to be made

ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of any of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of six per centum per annum), in the order of the maturity of the installments, and next to the payment of the principal of all said bonds then matured and unpaid; in every instance such payment to be made ratably to the persons entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in anywise to modify, but are subject to the provisions of Section 1 of this Article Four.

Restoration
of possession
to Company.

In case all the said payments shall have been made in full and no suit to foreclose this mortgage shall have been begun, the Trustees, after making such provision as to them may seem advisable for the payment of the next semi-annual installment of interest to fall due, and of the principal of said bonds next to mature shall restore to the Company the [46] possession of such property, rights and franchises hereby mortgaged and pledged.

The power of entry herein provided for may be exercised as often as occasion shall arise, pending this trust, and the Trustees may continue, so long as any said default shall continue, to exercise the power herein granted for such period or periods as they may deem expedient, unless and until the hold-

ers of a majority in interest of the bonds secured hereby then outstanding shall otherwise in writing request.

Section 3. In case a default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, or in the due observance and performance of any other covenant, agreement or condition required to be kept or performed by the Company hereunder, and any such default shall have continued for the period of ninety days, as aforesaid, or in case default shall be made in the payment of the principal of any of the bonds hereby secured, then and in every case of such default, upon the written request of the holders of a majority in amount of the

bonds hereby secured then outstanding, the Trustees, by notice in writing delivered to the Company, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds to the contrary notwithstanding. This provision, however, is subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises shall have been made, all arrears of interest upon all the bonds secured hereby, with interest on overdue installments of interest at the rate of six per centum per annum, shall either be paid by the Company or be collected out of the mortgaged premises, and all de-

Acceleration
of maturity
of bonds on
Company's
default.

faults in the observance of any other covenant of this indenture shall have been made good, [47] then and in such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Company and to the Trustees may waive such default and its consequences; but no such waiver shall extend to or shall affect any subsequent default, or impair any right consequent thereon.

Restoration
of rights
of parties.

In case, by foreclosure, entry, or otherwise, the Trustees shall have proceeded to enforce any rights under this indenture, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustees, then and in every such case, the Company and the Trustees respectively shall be restored to their former position and rights hereunder with respect to the mortgaged premises, and all rights, remedies and powers of the Trustees shall continue as if no such proceeding had been taken.

Other
remedies in
event of
Company's
default.

Section 4. In case (1) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of ninety days; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Company, and any such last men-

tioned default shall have continued for the period of ninety days after written notice thereof shall have been given to the Company by the Trustees, or by the holders of five per cent in amount of the bonds hereby secured—then, and in each and every such case of default the Trustees, with or without entry, personally or by attorney, in their discretion either:

(a) May, and upon the written request —sale by Trustees. of the holders of a majority in amount of the bonds hereby secured then outstanding, shall sell and dispose of all and singular the premises, property, rights, privileges, interests, franchises, immunities [48] and exemptions hereby mortgaged or conveyed, or intended so to be, at public auction in the City of Chicago, in the State of Illinois, upon such terms as to credits, partial credits and security for payment as the Trustees may deem proper or expedient, having first given public notice of the time, place and terms of sale or sales as hereinafter provided.

(b) May, in the manner provided by —foreclosure. law, institute and prosecute such proceedings as may be necessary to enforce the foreclosure and sale of all and singular the property and premises mortgaged and pledged, including rights, franchises, exemptions, and interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article Four; or

(c) May proceed to protect and to enforce their rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustees, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Action by
Trustees on
request of
holders of a
majority in
amount of
outstanding
bonds.

Section 5. Upon the written request of the holders of a majority in amount of the bonds hereby secured and then outstanding, in case of any continuing default, as specified in Section 3 of this Article Four, it shall be the duty of the Trustees, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry and sale herein conferred, or to take appropriate judicial proceedings by action, [49] suit or otherwise, as the Trustees, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured;

Control by
the holders
of a majority
in amount
of the out-
standing
bonds.

But, anything in this indenture to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to waive or to instruct the Trustees to waive any default of the Company

hereunder (except default in payment of the principal of said bonds at maturity); to direct and to control the action of the Trustees, and the method and the place of conducting any and all proceedings for any sale of the premises and property subject to this indenture, or for the foreclosure of this indenture, or for the appointment of a receiver, or any other proceedings hereunder; to restore to the Company possession of its property hereby mortgaged and pledged in the event the Trustees shall have exercised their right of entry hereunder; and generally to direct the Trustees to discontinue any proceedings which they may have taken to enforce in any way the provisions hereof; and to revoke and annul any declaration or election accelerating the maturity of the principal of said bonds on account of any default so waived.

Section 6. In the event of any sale, whether made under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, or otherwise, the whole of the property subject to this indenture shall be sold in one parcel and as an entirety, including all the rights, title, estates, interests, equipment, leases, leasehold interests, contracts and other real and personal property of every name and nature, unless such sale as an entirety is impracticable by reason of some statute or cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustees to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels, as may be specified

Property to
be sold as an
entirety—
exceptions .

in such request; and this [50] provision shall bind the parties hereto, and each and every of the holders of the bonds and coupons hereby secured, or intended so to be.

Section 7. Notice of any such sale pursuant to any provision of this indenture, shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive calendar weeks prior to such sale in a newspaper published in the City of Chicago, Cook County, Illinois, and in a newspaper published in the Town of Hamilton, Ravalli County, Montana, and otherwise as may be required by law.

Section 8. The Trustees may adjourn, or may cause to be adjourned, from time to time, any sale about to be made of the mortgaged premises, by announcement of such adjournment at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned.

Section 9. Upon the completion of any sale or sales under this indenture, the Trustees in their own names or in the name of the Company, shall execute, acknowledge, and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds or other instruments, conveying, assigning and transferring the properties and franchises sold, subject severally and

respectively to the lien thereon, if any, which then shall be prior and superior to the lien of this indenture. The Trustees and their successors hereby are appointed the true and lawful attorneys irrevocably of the Company, in its name and stead to make all necessary conveyances and assignments of property thus sold; and for that purpose they may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power; the Company hereby ratifying [51] and confirming all that their said attorneys or such substitute or substitutes shall lawfully do by virtue hereof.

Any sale or sales made under or by virtue of this indenture shall operate to divest all right, title, interest, claim and demand whatsoever, either in law or in equity, of the Company, of, in and to the premises and property so sold, and shall be a perpetual bar both at law or in equity, against the Company, its successors or assigns, and against any and all persons claiming or to claim the premises or property sold, or any part thereof, from, through or under the Company, its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by or pursuant to this indenture, shall be real estate for all the purposes of this indenture, and shall be held and be taken to be fixtures and appurtenances of the said irrigation works or system, or other works of the Company as the case may be, and part thereof, and except as herein otherwise provided, are

Personal
property
made real
estate here-
under.

to be used and sold therewith and not separate therefrom.

Purchaser not responsible for application of purchase money.

Section 10. The receipt of the Trustees for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Maturity of all bonds in case of sale.

Section 11. In case of any such sale under the foregoing provisions of this Article, the principal sums of the bonds hereby secured, if not previously due, shall immediately thereupon [52] become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Application of proceeds of sale.

Section 12. The purchase money, proceeds or avails of any such sale, together with any other sums which then may be held by the Trustees under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

—expenses of sale, compensation and reimbursement of Trustees.

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustees, their

agents, attorneys and counsel, and of all expenses, liabilities or advances made or incurred by the Trustees, and to the payment of all taxes, assessments, or liens prior to the lien of these presents, except the superior liens and any taxes, assessments, or other charges subject to which the property shall have been sold.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest with interest on the overdue installments of interest at the rate of six per cent per annum), and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of Section 1 of this Article Four.

Third. To the payment of the surplus, if any, to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 13. Upon any such sale any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and to apply any bonds at par, and any matured and unpaid coupons hereby secured, by [53] presenting such bonds

—principal and interest of bonds.

—surplus to Company.

Application of bonds and coupons on purchase price.

and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations, and other charges; and thereupon such purchaser shall be credited, on account of such purchase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the bonds and coupons so presented; and at any such sale, any bondholders may bid for and purchase such property and may make payment therefor as aforesaid, and upon compliance with the terms of sale may hold, retain, and dispose of such property without further accountability.

Section 14. The Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of ninety days, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether upon the absolute maturity of said bonds or upon declaration as authorized by this indenture, or upon a sale as set forth in Section 11 of this Article Four,—then, upon demand of the Trustees, the Company will pay to the Trustees, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all

Company, on
default, to pay
Trustees full
amount of
bonds and
interest.

such bonds and coupons then outstanding, or interest or principal, or both, as the case may be, with interest at the rate of six per centum per annum upon the overdue principal and installments of interest; and in case the Company shall fail to pay the same forthwith upon such demand, the Trustees, in their own names and as trustees of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustees, so far as may be authorized by law, shall be [54] entitled to sue and recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustees to sue and recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the property subject to this indenture, and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trustees, in their own names and as trustees of an express trust, shall be entitled to enforce payment of and to receive all

—suit by
Trustees
to recover
amount of
bonds and
interest.

amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustees, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall

in any manner or to any extent affect the lien of this indenture upon the property or any part of the property subject to this indenture, or any rights, powers or remedies of the Trustees hereunder, or any lien, rights, powers, or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustees and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustees under this section shall be applied by the Trustees towards payment of the amounts then due and unpaid upon such bonds and coupons in respect or for the benefit of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Four), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustees for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment [55] thereon, if partly paid, and upon surrender thereof, if fully paid.

Section 15. The Company will not at Waiver of extension laws. any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force, nor will it claim, take or insist upon, any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the property or any part of the property subject to this indenture, prior to any sale or sales thereof to be made pursuant to any provi-

sion herein contained, or to the decree, judgment, or order of any court of competent jurisdiction; nor, after any such sale or sales, will it claim or exercise any right under any statute enacted by any state, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustees, but that it will suffer and permit the execution of every such power as if no such law or laws had been made or enacted.

Section 16. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustees or of the bondholders under this indenture, the Trustees shall be entitled to exercise the right of entry, and also any and all other rights and powers, herein conferred and provided to be exercised by the Trustees upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustees shall be entitled to the appointment of a receiver of the premises and property subject to this indenture, or any part thereof, and of the earnings, income, and revenues, rents, issues or profits thereof, with such powers as the court making such appointment shall confer. All rights of action under this indenture, or under any of [56] said bonds or coupons, may be enforced by the Trustees without the possession of any of the bonds or coupons or the produc-

Rights of Trustees in event of judicial proceedings.

—Receiver-ship.

tion thereof on any trial or other proceedings relative thereto.

Section 17. No holder of any bond or coupon hereby secured shall have the right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust hereunder, or for the appointment of a receiver or for any other remedy hereunder, unless such holder previously shall have given to the Trustees written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of a majority in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustees, and shall have afforded to them a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in their own name; nor, unless, also, they shall have offered to the Trustees security and indemnity satisfactory to them, against the costs, expenses and liabilities to be incurred therein or thereby; nor unless, notwithstanding such notice, opportunity, request and indemnity, the Trustees have for an unreasonable time (not exceeding thirty days) neglected to act or refused to act; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the Trustees, to be conditions precedent to the execution of the powers and trusts of this indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy

Exclusive
right of action
in Trustees,
except on cer-
tain conditions.

hereunder; it being understood and intended that no one or more holders of bonds and coupons issued under and secured hereby shall have any right in any manner whatever by his or their action to affect, disturb, or prejudice the lien of this indenture, or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be [57] instituted, had, and maintained only in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Section 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 19. No delay or omission of the Trustees, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein, and every power and remedy given by this Article to the Trustees or to the bondholders, may be exercised as often as may be deemed expedient, by the Trustees or by the bondholders.

Each remedy
hereunder
cumulative.

ARTICLE FIVE.

Non-liability
of directors,
stockholders,
and officers of
Company.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Company, or of any successor corporation, either directly or through the Company, or any receiver thereof, by the enforcement of any stock or other assessment or subscription, or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors [58] of the Company or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or any other indebtedness, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against every such stockholder, officer or director, whether arising at common law or in equity or created by statute or constitution, are hereby expressly released and waived as a condition of, as a part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE SIX.

Section 1. Any demand, request, or Requests of bondholders— other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any —may be in separate instruments. such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of bonds issued under and secured hereby, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustees or of the Company —execution of how proved. with regard to due action taken by them or it under such instrument, if such proof be made in the following manner:

The fact and the date of the execution by any person of any such demand, request, or other instrument or writing may be proved by the certificate of any notary public, or other officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution. [59]

Proof of ownership of bonds. The fact of the holding by any bondholder of said bonds, and the amounts and issue numbers of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depositary (wherever situated), if such certifi-

cate shall be deemed by the Trustees to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate. While the proof provided for by this section may be required by the Trustees or by the Company, yet the Trustees shall be protected in accepting and acting without proof upon any demand, request, or other instrument by them believed to be genuine and to have been signed by the proper party or parties.

Section 2. The Company and the Trustees may deem and may treat the bearer of any bond hereby secured, and the bearer of any coupons for interest on any such bond, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment of any bond or coupon, and for all other purposes, and neither the Company nor the Trustees shall be affected by any notice to the contrary.

—Bearer may
be treated as
absolute
owner.

ARTICLE SEVEN.

Section 1. Upon the written request of the president or vice-president of the Company, from time to time, while the Company is in possession of any of the property subject to this indenture, but subject to the conditions and limitations in this section prescribed and not otherwise, the Trustees shall release from the lien and operation of this indenture any portion of the equipment, embraced within this indenture, which may have become unfit, unnecessary, or unsuitable for use in the maintenance and operation

Release of
equipment
from lien of
mortgage.

of the Company's irrigation works or system, or whenever it shall be deemed desirable by the Company to replace the same with or substitute [60] therefor new equipment or property, of a value at least equal to that of the property so replaced or supplanted; Provided, however, that such disposition, replacement or substitution shall not impair or reduce the efficiency, or interfere with the due operation of the Company's irrigation works or system. Any new property acquired by the Company

to take the place of any property released under the provisions of this section shall become and be subject to this indenture as fully as if specifically mortgaged or assigned hereby; but if requested by the Trustees, the Company will convey and assign the same to the Trustees by appropriate deeds or other instruments upon the trusts and for the purposes of this indenture.

Substituted property subject to lien of mortgage.

Section 2. In the event the purchase money mortgage or mortgages, taken by the Company as part payment for any of the lands sold by the Company, after the date of recording this indenture shall exceed the sum or amount of Forty-two (42) Dollars per acre, the lien of the note or notes evidencing the unpaid purchase money, in excess of said sum or amount, shall be secondary and subordinate to the lien of the note or notes evidencing the unpaid purchase money to the amount of not to exceed Forty-two (42) Dollars per acre, as afore-

Purchase money mortgages to amount to \$42 per acre shall be a first lien—excess over \$42 per acre shall be a second lien.

said; said notes constituting a first lien as aforesaid, and the said notes constituting the second lien as aforesaid, may be secured by the same mortgage, and the said purchase money notes and mortgages securing the same shall be in such form as the Company shall from time to time prescribe; the said notes constituting a first lien as aforesaid may have any maturity or maturities respectively, which the Company shall determine and may mature either prior or subsequent to the said notes constituting a second lien as aforesaid.

Section 3. Upon the written request of the President of the Company, or in event of his death, resignation, absence from the State of Illinois, inability or refusal to act, then upon the written request of the Vice-president of the Company, the [61] Trustees, from time to time, shall execute such releases or other instruments as may be required to release from the lien and operation of this indenture any and all of the lands hereby mortgaged, including a release of the water rights specified in the form of deed then used by the Company, in conveying its lands, and acquired or held by the Company for purposes of sale, and which are not required for the purpose of constructing, maintaining or operating its irrigation works or system, and which the Company shall in good faith sell or contract to sell and desire to have released and conveyed in order to give good title to the purchasers; provided, however, that no such release shall be made unless and until the President, Vice-President or Secretary of the Com-

Release of
real prop-
erty mort-
gaged.

—condition
of release.

pany shall file with the Trustees a written statement under oath, setting forth that the Company has sold or in good faith contracted to sell the tract or tracts of land, a release of which from the lien of this indenture is desired, stating the name or names of the purchaser or purchasers, describing the tract of land purchased, and the price or prices and the terms of payment for such land, and the water rights to be conveyed therewith appurtenant thereto, upon the filing of said request and statement with the Trustees, the Trustees shall execute and deliver to the Company, or upon its order, a release of all and singular the premises described in said statement, including the water rights therein mentioned; within ninety (90) days after the execution and delivery of said release by the Trustees, the Company shall deposit or cause to be deposited, with the Bank, Trustee, a purchase money mortgage or mortgages and notes thereby secured, covering the land so sold and released, constituting a first and prior lien to an amount not less than

Deposit of
purchase
money mort-
gages for
lands so sold
and released.

Forty-two (42) Dollars per acre, upon the land so sold and released, together with a certificate of counsel learned in the law, that such mortgage or mortgages and notes thereby secured, to an amount not less than Forty-two (42) Dollars per acre upon the land so sold and released, constitutes a first [62] lien on the land covered thereby; in event that the purchase money mortgage or mortgages taken by the Company as part payment for any of the land so sold and released, shall exceed the sum or amount of Forty-two (42) Dollars per acre, the notes evidencing such unpaid

purchase money may be divided into two classes containing the conditions respectively, as provided by Section 2 of this Article and upon the delivery to the said Trustees of the said purchase money mortgage and notes, constituting a first lien on the premises so sold and released, to an amount not less than Forty-two (42) Dollars per acre, the Company may retain the said notes constituting a second lien as provided by section 2 of this Article; provided, however, the Trustees, in case the Company shall make default at any time, in depositing said mortgages and notes as provided by this Section 3, shall not release any other land under the provisions of this Section 3 until such default shall have been removed; and provided further, that at no time shall the lands released as aforesaid, for which purchase money mortgages are not deposited with the Bank,

Limitation on amount of land authorized to be released.

Trustee, as provided by this Section, 3, exceed ten (10) per centum of the total aggregate amount of all lands, to which the Company held good title on the date of recording this indenture and all lands to which the Company acquired good title subsequent to said date, as shown by the certificates of counsel and the sworn statements of the President, Vice-President, or Secretary of the Company as provided in Sections 8 and 10 of Article Three hereof.

Release of tract not exceeding 500 acres at any time on request.

Section 4. At any time upon the written request of the President of the Company or in event of his death, resignation, absence from the State of Illinois, inability or refusal to act, then upon the written request of the

Vice-President of the Company the Trustees shall execute and deliver to the Company or upon its order a release of any tract or tracts of land described in such request, subject to the lien of this indenture, including a release of the water rights specified in [63] the form of deed then used by the Company in conveying its lands and not exceeding in the aggregate five hundred (500) acres, and which are not required for the purpose of constructing, maintaining or operating its irrigation works or system, provided, however, that there shall be

Company's
undertaking
to deposit
mortgages.

deposited with the Trustees, with such written request for such release, the written undertaking or obligation of the Company executed by its President or Vice-President and attested by its Secretary under the corporate seal of the Company, to deposit or cause to be deposited with the Trustees within ninety (90) days from the execution and delivery of such release, a purchase money mortgage or mortgages and notes thereby secured constituting a first lien upon the premises so released, to an amount not less than Forty-two (42) Dollars per acre, for each acre of land so released and also a certificate of counsel learned in the law that said purchase money mortgages so deposited with the Trustees, constitute a first and valid lien to the extent and amount aforesaid on the premises so

No second
tract to be
released till
purchase
money mort-
gages de-
posited.

released; the Trustees shall not release any other tract of land upon the written request of the President or Vice-President of the Company, accompanied by the said written obligation or undertaking of the Company as afore-

said, until the said purchase money mortgages and notes for the land released as aforesaid, shall first have been deposited with the Trustees as hereinbefore provided.

Company
may deposit
cash in lieu
of purchase
money
mortgages.

At any time the Company shall have the right to deposit with the trustees in lieu of the said purchase money mortgages and notes, or any part thereof, cash to the amount of Forty-two (42) Dollars per acre for each and every acre of land released by the Trustees from the lien of this indenture, for which purchase money mortgages shall not have been deposited as aforesaid; but such cash deposit shall be refunded by the Trustees at any time upon the deposit with the Trustees of said purchase money mortgages to the amount which [64] the Company would have been required to deposit, had no cash deposit been made.

The Trustees may accept and rely upon the written requests, statements and documents furnished by the Company or any of its officers as in this Article Seven provided, and the same shall be and constitute full protection and justification to the Trustees for anything suffered or done by them under this Article Seven in acting thereon.

The Trustees shall be entitled to collect and receive and sue for any and all sums of money accruing upon said notes, or under the mortgages securing the same, deposited with the Trustees as herein provided and to enforce or realize upon, by suit or otherwise, the lien of said mortgages, or in their discretion may employ either Cobe & McKinnon of the City of Chicago, Illinois, or the

Collection of
notes and
mortgages
pledged here-
under.

Assets Realization Company of Camden, New Jersey, or such other person or corporation as the Trustees may select, as their agent to collect, receive and sue for said sums, or to enforce or realize upon, as aforesaid, the lien of said mortgages.

The moneys received by, for and paid over to and deposited with the Bank, Trustee, under the provisions of this section, except moneys deposited in lieu of purchase money mortgages shall be used and applied by them as in the manner provided in Article Two of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article Seven be required to see the application of the purchase money.

The Trustees shall be under no obligation to foreclose any of said mortgages unless the Company shall advance the costs and expenses thereof, including Trustees' fees, or unless, on the failure of the Company so to do, one or more of the bondholders shall indemnify the Trustees in a manner and in an amount satisfactory to the Trustees against such costs and expenses. All advances made and expenses incurred by the [65] Trustees in and about any such foreclosure sale shall be repaid, with interest, out of the proceeds of such sale.

In case the Trustees shall enforce the collection of any of said notes or mortgages by legal proceedings, as herein provided, and thereby procure a sale of the lands securing said notes, the Trustees may, if they deem best in the interest of the bondholders so to do, bid for and purchase such property at such

Disposition of
of moneys
so collected.

Proceedings
to foreclose
mortgages
pledged.

sale at a price not exceeding the amount of said notes, plus interest, costs and expenses of the proceedings, and the certificate of purchase so obtained by the Trustees, or title to the lands if such sale results in the Trustees obtaining title thereto, may be sold by the Trustees at such price and on such terms as to the Trustees may seem meet and proper. All moneys advanced by the Trustees for the purchase of lands as hereinbefore provided shall be and constitute a first lien upon the property mortgaged and pledged under this indenture.

Any release authorized by this Article Seven may be executed by the Bank, Trustee, alone and when so executed, shall have the same force and effect as though executed by the Trustees jointly.

Section 3. In case any of the property subject to this indenture shall be in possession of a receiver lawfully appointed, the powers in and by this Article Seven conferred upon the Company may be exercised by such receiver, with the approval of the Trustees; and if the Trustees shall be in possession of any such property under any provision of this indenture, then all the powers in this article conferred upon the Company may be exercised by the Trustees in their discretion.

Section 4. All moneys received as compensation for any property or rights of the Company taken by the exercise of the power of eminent domain shall be treated as realized from a voluntary sale by the Company of the property or rights so [66] taken, and such moneys shall be subject in all respects to the provisions of this

Powers of receiver or Trustees in possession.

Proceeds of property taken by eminent domain.

Article Seven, as though realized from a voluntary sale, except that if the condemnation proceedings are defended by the Company, its reasonable expenses and attorneys' fees in making such defense shall be deducted from any award, and only the surplus paid over to the Trustees as in this Article Seven provided.

ARTICLE EIGHT.

Until default
Company to
remain in
possession.

Section 1. Until some default shall have been made in the due and punctual payment of the interest on or the principal of the bonds at any time outstanding and hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Company, and, until such default shall have continued beyond the period of grace, if any, herein provided, with respect thereto, the Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this indenture, except the property pledged or required to be pledged with the Trustees hereunder, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the revenues, income, rents, issues and profits thereof.

Termination
of trust.

Section 2. If, as and when the bonds issued under and secured hereby shall have become due and payable, the Company shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the bonds

and coupons hereby secured, then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the said Bank, Trustee hereunder, the entire amount due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Company, and shall well and truly keep and perform all the things herein [67] required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Company, and the estate, rights, title and interest of the Trustees, shall thereupon cease, determine and become void; and in such case the Trustees, on demand of the Company and at its cost and expense, shall enter satisfaction of this indenture upon the records; otherwise the same shall be, continue, and remain in full force and virtue.

ARTICLE NINE.

Acceptance
by Trustees.

Section 1. The Trustees, for themselves and their successors, hereby accept the trusts and assume the duties herein created and imposed upon them, but upon the following terms and conditions:

(a) The Trustees shall be responsible for reasonable diligence in the performance of their trust and to that extent only, and shall not be answerable for the default, omission, mistake or misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall

Responsibility
of Trustees.

the Trustees be answerable for any default of the said Cobe & McKinnon or the said Assets Realization Company in and about the collections or receipts mentioned in Article Two and in Article Seven of this indenture; nor shall any Trustee be responsible for the acts or defaults of any other trustee or trustees, or for anything whatever in connection with this trust, except each for its or his wilful misconduct or gross negligence.

(b) The Trustees shall be protected in Protection of Trustees. accepting and acting upon any notice, request, consent, certificate, bond or other paper or document, by them believed to be genuine and to have been signed by the proper party or parties, and any order, request or statement to be made upon or to the Trustee, or either of them, by the Company may be signed by the [68] President, Vice-President or Secretary of the Company, unless otherwise specifically required, and the Trustees may accept as conclusive proof of any fact or matter required to be ascertained by them herein any statement signed by any such officer or otherwise in accordance with the provisions of this indenture.

Personal non-liability of Trustees. (c) The Trustees shall not be personally liable for any debts duly contracted by them, or for damages to persons or property injured or damaged, or for salaries or non-fulfillment of contracts during any period wherein the Trustees shall manage the trust property or premises upon entry as aforesaid. Neither shall the Trustees be under any obligation to take any action toward the execution or enforcement of the trusts hereby created, which,

in the opinion of the Trustees, shall be likely to involve expenses or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustees, furnish satisfactory indemnity against such expense or liability; nor shall the Trustees be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent in amount of the bonds hereby secured then outstanding, or to take action in respect of any default unless requested to take action in respect thereof, by a writing signed by the holders of not less than a majority in amount of the bonds hereby secured, then outstanding, and tendered satisfactory indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustees, and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustees, to determine whether or not they shall take action in respect of any default without such notice or request from bondholders, or to affect any other decision or power given to the Trustees. [69]

Trustees not responsible for filing or recording this indenture or any mortgage deposited hereunder.

(d) The Trustees shall not be responsible for the recording or filing of this indenture as a mortgage of real or personal property, or for the recording or filing of any mortgage deposited with them hereunder; nor shall the Trustees be required to take any action required by statute or any contract or otherwise for preserving the title to the property hereby conveyed

or for effectuating, protecting, perpetuating, or keeping good the lien of this indenture or of said mortgages, or to give notice of the existence of such lien or of the assignment or deposit of any such mortgage; nor shall said Trustees be liable or responsible for permitting or suffering the Company, its agents or servants, to retain or be in the possession of, or manage, conduct or control the canals, premises and property hereby conveyed, or intended so to be, nor shall said Trustees become responsible for any destruction, deterioration, loss, injury or damage which may be done or suffered to be done to said canals, property and premises by the Company, its servants or agents or by any person or persons whomsoever, nor shall the Trustees be held responsible for the consequences of any breach by the Company, its agents or servants, of any of the covenants herein, or in said bonds contained, or in any contract previously entered into by it, nor for or on account of any act, omission or default of the Company, its agents, or servants, of any kind, character or nature whatsoever.

Reimbursement of Trustees. (e) The Trustees shall be reimbursed for, and be indemnified against any liability or damages which may be sustained by them in the premises.

Prior lien of Trustees. (f) The Trustees shall have, secured hereby upon the property covered by this indenture and the proceeds thereof, a lien prior to that of any bonds issued under this indenture, for their compensation, disbursements and expenses, including attorneys' and counsels' fees, and also for

any liability or damage by them sustained in the premises. [70]

No responsibility of Trustees for validity of mortgage or recitals therein.

(g) The Trustees shall not be responsible in any manner whatsoever for the validity of this indenture, or of the lien hereby created, or for the execution and acknowledgment thereof, or for the value, genuineness or validity of the mortgages or notes deposited hereunder, or for the title, value, amount or extent of the security afforded by the property covered or purported to be covered hereby, or for the recitals herein or in said bonds contained, all such recitals being and to be taken as the statements of the Company, and as not made by the Trustees who have no knowledge in reference thereto; nor shall they be accountable for the use of any bonds certified and delivered by the Trustees hereunder or for the application of the proceeds of such bonds.

No duty of Trustees as to Taxes, etc.

(h) It shall be no part of the duties of the Trustees to pay any taxes or assessments on any of the property covered, or intended to be covered, by the lien hereof or on any of the property covered by the lien of the mortgages or notes deposited by the Company with the Trustees under the provisions hereof; or to keep themselves informed or advised as to the payment of any such taxes or assessments, or to give notice of any default on the part of the Company in that regard or to require the payment of such taxes or assessments; but the Trustees may, in their discretion, pay such taxes or assessments if payment of the same has been neglected by the Company or the mortgagors, subject, however, to the right of the

Company, or mortgagors to contest the same as mentioned in Section 4 of Article Three of this indenture.

Duty of Trustees when sued. (i) Should any suit or other proceeding be brought against the Trustees by reason of any matter or thing connected with the trusts hereby created, or by reason of their being such Trustees, they shall be under no obligation to enter any appearance or in any way to appear or defend such suits or other proceedings until indemnified to their full satisfaction for so doing; but they may, nevertheless, appear and defend [71] such suits or proceedings without indemnity, if they elect so to do, and in such case they shall be reimbursed by the Company, or in default be compensated therefor from the trust estate.

Compensation of Trustees. The Trustees may select and employ in and about the execution of the trusts hereby created suitable agents and attorneys and shall be entitled to reasonable compensation for all services rendered by themselves and by such agents and attorneys in the execution of the trusts hereby created, and the Company agrees to pay such compensation as well as all expenses necessarily incurred or advances made by the Trustees hereunder.

Resignation of Trustees. Section 2. Either of the Trustees, or any trustee or trustees hereafter appointed, may resign and be discharged from the trusts created by this indenture, by executing and filing with the Company an instrument in writing resigning such trusts, and by giving the bondholders notice by publication of such resignation, specifying a date when such res-

ignation shall take effect, which notice shall be published at least once a week for four successive calendar weeks prior to the date so specified, in a newspaper at that time published in the City of Chicago, in the State of Illinois. Such resignation shall take effect on the date specified in such notice, unless previously a successor trustee or successor trustees shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee or trustees.

Removal
of Trustees. Any trustee or trustees hereunder may be removed at any time by an instrument in writing under the hands of the holders of a majority in amount of the bonds hereby secured and then outstanding and delivered to the Trustees and the Company.

Section 3. Emile K. Boisot, one of the parties of the second part, has been joined as Trustee hereunder, so that if by any [72] present or future law in any jurisdiction, in which it may be necessary to perform any act in the execution of the trusts herein created, the First Trust and Savings Bank, Trustee, or its successor or successors, may be incompetent or unqualified to act as such Trustee, then all of the acts required to be performed in such jurisdiction in the execution of the trusts hereby created, shall and will be performed by said Emile K. Boisot, as Trustee, or his successor or successors, acting alone. Except as it may be deemed necessary for said Emile K. Boisot solely to execute the trusts hereby created, the First Trust and Savings Bank,

Corporate
trustee may
act for both
Trustees.

Trustee, or its successor or successors, may solely have and exercise the powers, and shall be solely charged with the performance of the duties hereinbefore declared on the part of the Trustees to be had and exercised, or to be performed. Any request in writing by the First Trust and Savings Bank, Trustee, or by any Trust Company appointed in succession to it, to the individual Trustee hereunder, or any Trustee appointed in succession to him, shall be sufficient warranty for the individual Trustee, or his successor, taking such action as may be so requested. Such individual Trustee, or any successor, may delegate to the First Trust and Savings Bank, or the Trust Company appointed in succession to it, the exercise of any power, discretionary or otherwise, conferred by any provisions of this indenture; it being the true intent and purpose of the parties hereto that at all times there shall be a duly appointed, qualified and acting Trustee vested with the powers, rights, estates and interests, and charged with the administration and execution of the trusts and duties by this instrument granted, created and imposed.

Section 4. In case at any time the Trustees, or either of them, or any successor trustee, shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, [73] by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized but until a new trustee or trustees shall be appointed by the bondhold-

Appointment
of successor
Trustees.

ers as herein authorized, the Company, by an instrument executed by order of its board of directors,

Appointment
of Trustees
by Company.

may appoint a trustee or trustees to fill such vacancy ; provided, however, that every

such trustee or one of such trustees shall be a trust company in the said City of Chicago having a capital and surplus aggregating at least \$1,000,000, if there be such a trust company willing and qualified to accept the trust upon reasonable or customary terms. After any such appointment by the Company, it shall publish notice of such appointment once in each of four successive calendar weeks in a newspaper published in the City of Chicago, Illinois, and any new trustee or trustees so appointed by the Company shall immediately and without further act be superseded by a new trustee or trustees appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment by such bondholders be made prior to the expiration of six months after such publication of notice ; provided, however, that the appointment of a successor to the individual Trustee, shall be subject to the approval of the Bank, Trustee, or its successor.

Upon the appointment of any new trustee

Recording
certificate of
appointment
of new
Trustee.

hereunder, it shall be the duty of the Company to execute a certificate of such appointment

under its corporate seal and to cause the same to be recorded in the same manner as this indenture shall have been recorded.

Any successor trustee appointed hereunder shall

execute, acknowledge and deliver to the trustee last in office and also to the Company, an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance shall become vested with all the estates, properties, powers, rights, trusts, duties and obligations of its predecessor in the trust hereunder, with like [74] effect as if originally named as trustee herein, but nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer, and deliver its interest in any property and moneys subject to this indenture, to the successor trustee so appointed in its place; and, upon request of any such successor trustee, the Company shall make, execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustees all such estates, properties, rights, powers and duties.

Acceptance
by new
Trustee.

Conveyance
by predecessor
Trustee.

ARTICLE TEN.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Company, shall bind its successors and assigns, whether so expressed or not.

Section 2. Nothing contained in this indenture or in any bond hereby secured, shall

Covenants,
etc., of
Company
binding on its
successors.

Consolidation.

prevent any lawful consolidation or merger of the Company with any other corporation, or any conveyance and transfer (subject to the continuing lien of this indenture and to all the provisions thereof), of all the property subject to this indenture as an entirety to a corporation at that time existing, and empowered to acquire the same; provided, however, that such consolidation, merger or sale shall preserve and not impair the lien and security of this indenture, or any of the rights and powers of the Trustees or of the bondholders hereunder, and that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance [75] and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

Section 3. In case, pursuant to Section 2 of this Article, the Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer (subject to this indenture), all the property covered by this indenture, as an entirety as aforesaid, the successor corporation formed by such consolidation, or into which the Company shall have been merged, or which shall have purchased and received a conveyance and transfer, as aforesaid—upon executing and causing to be recorded an instrument satisfactory to the Trustees, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance

Status of
consolidated
Company.

of all the covenants and conditions of this indenture—shall succeed to, and shall be substituted for, the Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Company, any or all of such bonds, issuable hereunder which theretofore shall not have been executed by the company and delivered to the said Bank, Trustee; and upon the order of said successor corporation, in lieu of the Company, and subject to all the terms, conditions and restrictions herein prescribed, the said Bank, Trustee, shall certify and shall deliver any of such bonds which previously shall have been signed and delivered by the officers of the Company to said Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to said Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this [76] indenture, as if all of said bonds had been issued at the date of the execution hereof.

Section 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms “Company” and the “Bitter Root

Meaning of terms “Company” and “Bitter Root Valley Irrigation Company.”

Valley Irrigation Company” include and mean not only the party of the first part hereto, but also any such successor corporation formed by consolidation or otherwise under the laws of the State of

Montana or elsewhere. Every such successor or purchasing corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Bitter Root Valley Irrigation Company in its name or otherwise.

Rights and duties of officers of successor Company. Section 5. Any act or proceeding, by any provision of this indenture authorized or required to be done or performed by any board or officer of the Company shall and may be done and performed with like force and effect by the like board or officer of any corporation that shall at the time be such lawful sole successor or purchaser of the Company.

Surrender of powers by Company. Section 6. Nevertheless, before the exercise of the powers conferred by this Article, the Company, by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustees, may surrender any of the powers reserved to the Company or to such successor corporation; and thereupon such power so surrendered shall terminate.

Meaning of word "Trustees." Section 7. The word Trustees means the Trustees or Trustee for the time being, whether original or successor; the words Trustee, bond, bondholder, mortgage, note, shall include the plural as well as the singular number, unless otherwise expressly indicated. The word coupons refers to the interest coupons attached to the bonds issued hereunder. The word person, used with reference to a bondholder, shall include associations or corporations owning any of said bonds. [77]

Testimonium. In Witness Whereof, The said Bitter Root Valley Irrigation Company has caused this indenture to be signed and acknowledged in its corporate name, by its president or vice-president, and its corporate seal to be hereunto affixed, and the same to be attested by its secretary; and the said the First Trust and Savings Bank, to evidence its acceptance of the trusts hereby declared and created, has caused this indenture to be signed and acknowledged in its corporate name by its president or vice-president, and its corporate seal to be hereunto affixed, and the same to be attested by its secretary, and the said Emile K. Boisot, to evidence his acceptance of the trusts hereby created, has hereunto set his hand and seal—all as of the day and year first above written.

Execution by This instrument is executed in triplicate
Bitter Root
Valley Irriga- originals.
tion Company.

BITTER ROOT VALLEY IRRIGATION COMPANY,

By FRANK I. BENNETT,

President.

[Corporate Seal of the Bitter Root Valley Irrigation Company.]

Attest:

FRANK G. MURRAY,

Secretary.

Signed, sealed and delivered in presence of:

LEONARD A. BUSBY.

S. J. BLUMENTHAL.

As to Bitter Root Valley Irrigation Company.

FIRST TRUST AND SAVINGS BANK,
By EMILE K. BOISOT,
Vice-President.

[Corporate Seal of the First Trust and Savings
Bank.]

Attest:

Execution by
the First
Trust & Sav-
ings Bank.

DAVID V. WEBSTER,
Secretary.

Signed, sealed and delivered in the pres-
ence of:

O. A. BESTEL.
ROY C. OSGOOD.

As to the First Trust and Savings Bank.

EMILE K. BOISOT. (Seal)

Execution by
Emile K.
Boisot.

Signed, sealed and delivered in the pres-
ence of:

O. A. BESTEL.
ROY C. OSGOOD.

As to Emile K. Boisot. [79]

State of Illinois,
County of Cook,—ss.

Acknowledg-
ment of
Company.

I, Carrie Perrine, a notary public in and
for the County of Cook and State of Illinois,
do hereby certify that Frank I. Bennett,
president, and Frank G. Murray, secretary, of the
Bitter Root Valley Irrigation Company, a corpora-
tion, the party of the first part to the foregoing instru-
ment, both personally known to me to be the president
and secretary, respectively, of the said Bitter Root
Valley Irrigation Company, and personally known to
me to be the same persons whose names are subscribed

to the foregoing instrument as such president and secretary, respectively, appeared before me this day in person and acknowledged that said corporation executed the said instrument, and that they signed, sealed and delivered the said instrument as their free and voluntary act as such president and secretary, respectively, and as the free and voluntary act of the said Bitter Root Valley Irrigation Company, for the uses and purposes therein set forth.

And the said Frank G. Murray, being by me first duly sworn, deposes and says that he is the duly qualified and acting secretary of the said Bitter Root Valley Irrigation Company, and that the seal affixed to the said instrument is the corporate seal of the said Bitter Root Valley Irrigation Company, and was by the president affixed to the said instrument in pursuance of the power and authority granted him by the by-laws and by the order of the Board of Directors of said Company.

Given under my hand and notarial seal, this 29th day of June, A. D. 1909.

[Notarial Seal.] CARRIE PERRINE,
Notary Public.

My commission expires February 7, 1910. [80]

State of Illinois,
County of Cook,—ss.

I, Oliver A. Bestel, a notary public in and
for the County of Cook and State of Illinois,
do hereby certify that Emile K. Boisot, vice-
president, and David V. Webster, secretary of the
First Trust and Savings Bank, a corporation, party
of the second part in and to the foregoing instrument,

Acknowledg-
ment of the
First Trust &
Savings Bank.

and personally known to me to be the vice-president and secretary, respectively, of said the First Trust and Savings Bank, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such president and secretary, respectively, appeared before me this day in person and acknowledged that said corporation executed the said instrument, and that they signed, sealed and delivered the said instrument as their free and voluntary act as such president and secretary, respectively, and as the free and voluntary act and deed of the said the First Trust and Savings Bank for the uses and purposes therein set forth.

And the said David V. Webster, being by me first duly sworn, deposes and says that he is the duly qualified and acting secretary of said the First Trust and Savings Bank, and that the seal affixed to the said instrument is the corporate seal of said corporation and was by him affixed to the said instrument, in pursuance of the power and authority granted him by the by-laws of said corporation.

Given under my hand and notarial seal, this 29th day of June, A. D. 1909.

[Notarial Seal.] OLIVER A. BESTEL,
Notary Public.

My commission expires January 2d, 1910. [81]

State of Illinois,
County of Cook,—ss.

I, Oliver A. Bestel, a notary public in and
for the County of Cook and State of Illinois,
do hereby certify that Emile K. Boisot, personally known to me to be the same person whose

name is signed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he executed the same and that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 29th day of June, A. D. 1909.

[Notarial Seal.] OLIVER A. BESTEL,
Notary Public.

My commission expires January 2d, 1910. [82]

State of Illinois,
 County of Cook,—ss.

Affidavit of
 president and
 secretary of
 Company
 under
 Montana
 statute.

Before me, the undersigned authority, personally appeared Frank I. Bennett, president, and Frank G. Murray, secretary, who, being duly and severally sworn, depose and say that they are, respectively, the president and secretary of the Bitter Root Valley Irrigation Company, a corporation organized and existing under and by virtue of the laws of the State of Montana, the party of the first part in the foregoing mortgage or deed of trust; that as such officers they executed the said instrument for and on behalf of the said corporation, that said mortgage or deed of trust was made and executed by the said corporation in good faith and for the purpose of securing the payment of the bonds mentioned in said mortgage or deed of trust to the amount therein set forth, and the interest thereon; and that said mortgage or deed of trust was made and executed without any

design, desire or intent to hinder, delay, or defraud the creditors of said corporation.

FRANK I. BENNETT,
President.

FRANK G. MURRAY,
Secretary.

Sworn and subscribed to before me this 29th day of June, A. D. 1909.

[Notarial Seal]

CARRIE PERRINE,
Notary Public.

My commission expires February 7th, 1910. [83]

State of Illinois,
County of Cook,—ss.

Affidavit of
president and
secretary of
corporate
trustee under
Montana
statute.

Before me, the undersigned authority, personally appeared Emile K. Boisot, Vice-President, and David V. Webster, Secretary, who being duly and severally sworn depose and say that they are, respectively, the Vice-President and Secretary of the First Trust and Savings Bank, a corporation organized and existing under and by virtue of the laws of the State of Illinois, one of the Trustees, party of the second part, mentioned in the foregoing mortgage or deed of trust; that as such officers they executed the said instrument for and on behalf of the said First Trust and Savings Bank, that said mortgage or deed of trust was made and executed by the said First Trust and Savings Bank in good faith and for the purpose of securing the payment of the bonds mentioned in said mortgage or deed of trust to the amount therein set forth and the interest thereon; and that said

mortgage or deed of trust was made and executed by said Bank without any design, desire or intent to hinder, delay or defraud the creditors of the said Bitter Root Valley Irrigation Company.

EMILE K. BOISOT,
Vice-President.
DAVID V. WEBSTER,
Secretary.

Sworn and subscribed to before me this 29th day of June, A. D. 1909.

[Notarial Seal] OLIVER A BESTEL,
Notary Public.

My commission expires January 2d, 1910. [84]

State of Illinois,
County of Cook,—ss.

Affidavit of
individual
Trustee un-
der Montana
statute.

Before me, the undersigned authority, personally appeared Emile K. Boisot, who being duly sworn deposes and says that he is one of the Trustees, party of the second part, mentioned in the foregoing mortgage or deed of trust; that said mortgage or deed of trust was made and executed by him in good faith and for the purpose of securing the payment of the bonds mentioned in said mortgage or deed of trust to the amount therein set forth and the interest thereon; and that said mortgage or deed of trust was made and executed by him without any design, desire or intent to hinder, delay or defraud the creditors of the said Bitter Root Valley Irrigation Company.

EMILE K. BOISOT.

Sworn and subscribed to before me this 29th day of June, A. D. 1909.

[Notarial Seal]

OLIVER A BESTEL,
Notary Public.

My commission expires January 2d, 1910. [85]

All of the property so conveyed and mortgaged to your orators as aforesaid (except certain land contracts, purchase money mortgages, and notes therein mentioned, or thereafter acquired, deposited with your orators, as trustees, or in the hands of officers of said company, or of the trustee in bankruptcy, hereinafter mentioned) is situated within the County of Ravalli, and State of Montana, and within the District of Montana. Said mortgage or deed of trust was duly filed for record in the office of the Recorder of Ravalli County, Montana, on July 2, 1909, recorded in Volume 23 of Mortgages, at page 394 *et seq.*

Your orators duly accepted the trusts therein created and they were then and now are fully authorized and empowered to take and hold in trust the property conveyed to them therein and to execute the trusts reposed in them under and by virtue of the provisions thereof; and in the event that your orator, First Trust and Savings Bank, is, for any reason incompetent and so unqualified to act as such trustee, your orator, Emile K. Boisot, was then and is now fully authorized and empowered to take and hold in trust the property conveyed to him therein, and to execute the trusts reposed in your orators, as trustees, or in your orator, Emile K. Boisot, under and by virtue of the provisions thereof.

On or about July 8, 1909, the Bitter Root Valley Irrigation Company duly issued of the bonds described in said mortgage or deed of trust, bonds numbered from 1 to 100, inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1914; and on or about July 8, 1909, duly issued bonds numbered from 101 to 200 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1915; and on or about August 21, 1909, duly issued bonds numbered from 201 to 314 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1916; and on or about December 27, 1909, duly issued bonds numbered from 315 to 350 inclusive, in the sum of one thousand dollars (\$1,000.00) [86] each, maturing January 1, 1916; and on or about November 11, 1909, duly issued bonds numbered from 351 to 374 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1917; and on or about December 27, 1909, duly issued bonds numbered from 375 to 427 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1917; and on or about April 19, 1910, duly issued bonds numbered from 428 to 437 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1917; and on or about May 23, 1910, duly issued bonds numbered from 438 to 453 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1917; and on or about February 6, 1911, duly issued bonds numbered from 454 to 479 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1917; and on or about

November 11, 1909, duly issued bonds numbered from 501 to 540 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1918; and on or about December 27 1909, duly issued bonds numbered from 541 to 586 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1918; and on or about April 19, 1910, duly issued bonds numbered from 587 to 596 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1918; and on or about September 27, 1912, duly issued bonds numbered from 597 to 647 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1918; and on or about July 8, 1909, duly issued bonds numbered from 751 to 1180 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1919; and on or about November 11, 1909, duly issued bonds numbered from 1181 to 1250 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1919; and on or about December 27, 1909, duly issued bonds numbered from 1251 to 1296 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1919; and on or about April 19, 1910, duly issued bonds numbered from [87] 1297 to 1300 inclusive, in the sum of one thousand dollars (\$1,000.00) each, maturing January 1, 1919; and on or about November 11, 1909, duly issued bonds numbered from 1301 to 1400 inclusive, in the sum of five hundred dollars (\$500.00) each, maturing January 1, 1919; and on or about December 27, 1909, duly issued bonds numbered from 1401 to 1501 inclusive, in the sum of five hundred dollars (\$500.00)

each, maturing January 1, 1919; and on or about April 19, 1910, duly issued bonds numbered from 1502 to 1521 inclusive, in the sum of five hundred dollars (\$500.00) each, maturing January 1, 1919; and on or about May 23, 1910, duly issued a bond numbered 1522 in the sum of five hundred dollars (\$500.00), maturing January 1, 1919; and on or about September 27, 1912, duly issued bonds numbered from 1523 to 1700 inclusive, in the sum of five hundred dollars (\$500.00) each, maturing January 1, 1919, and delivered all of the said bonds to your orator, First Trust and Savings Bank, and said bonds of the aggregate par value of one million three hundred seventy-six thousand dollars (\$1,376,000.00) were duly certified by your orator, First Trust and Savings Bank, in all respects as provided in said mortgage or deed of trust, and the bonds so certified by your orator, First Trust and Savings Bank, were the bonds bearing dates and numbers and being in the amounts and bearing dates of maturity as aforesaid, and all of said bonds of the aggregate par value of one million three hundred seventy-six thousand dollars (\$1,376,000.00), together with the interest coupons thereto attached, were, as your orators are informed and believe, duly sold and delivered by the Bitter Root Valley Irrigation Company for a valuable consideration and in accordance with the provisions of said mortgage or deed of trust, and the said bonds of the aggregate par value of one million three hundred seventy-six thousand dollars (\$1,376,000.00), together with all interest coupons thereto attached (except bonds numbered from 1 to

200 inclusive, and 751 to 950 inclusive, which were of the aggregate par value of [88] four hundred thousand dollars (\$400,000.00), and which became due and payable on January 1, 1915, or prior thereto, and except the interest coupons upon all of said bonds which became due and payable on January 1, 1916, or prior thereto, which said bonds and interest coupons last mentioned have been paid, surrendered and canceled), are now outstanding in the hands of divers persons and corporations, who are now the owners and holders thereof for value, and your orators are advised and aver that said bonds and coupons so issued as aforesaid are now in all respects valid and outstanding obligations of the defendant, Bitter Root Valley Irrigation Company, and are entitled to the benefits and security of said mortgage or deed of trust, and there is now due and owing thereon the principal sum of nine hundred and seventy-six thousand (\$976,000.00) dollars and interest thereon at the rate of six per centum (6%) per annum from January 1, 1916.

VI.

On June 1, 1909, the date of said mortgage or deed of trust, the Bitter Root Valley Irrigation Company owned certain lands and real estate not specifically described in said mortgage or deed of trust, which are subject to the lien thereof, under and by virtue of the terms of said mortgage or deed of trust, said lands last mentioned being the lands and real estate situated in the County of Ravalli, and State of Montana, and described as follows, to wit: [Here follows description of property.] [89]

VII.

Subsequent to the execution, delivery and recordation of said mortgage or deed of trust the Bitter Root Valley Irrigation Company acquired certain additional lands not specifically described in said mortgage or deed of trust which are under the terms and provisions of said mortgage or deed of trust, subject to the lien thereof, said lands last mentioned being the lands situated in the County of Ravalli, and State of Montana, described as follows, to wit: [Here follows description of property.]

[90]

VIII.

Various portions of the lands in said mortgage or deed of trust or hereinbefore or hereinafter described, prior to or since the date of the execution, delivery and recordation of said mortgage or deed of trust, have been subdivided and in some cases re-subdivided. The names of said subdivisions or re-subdivisions and the location and description thereof being as follows, to wit: ..

HAMILTON HEIGHTS.

The following described tract of land, to wit: [Here follows description of property.] [92]

IX.

In addition to the lands in said mortgage or deed of trust hereinabove mentioned and described, the Bitter Root Valley Irrigation Company is the owner of lands hereinafter described, which lands are subject to the lien of said mortgage or deed of trust, under and by virtue of the terms and provisions thereof, which lands are situated in the County of

Ravalli, and State of Montana, and are known and described as follows, to wit: [Here follows description of property.] [95]

X.

That of the lands in said mortgage or deed of trust hereinbefore or hereinafter described certain portions thereof have been released from the lien of said mortgage or deed of trust by releases duly executed and delivered by your orators, as Trustees, pursuant to and in accordance with the terms and provisions of said mortgage or deed of trust, and the said lands which have been so released as aforesaid are the lands situated in the County of Ravalli, and State of Montana, and known and described as follows, to wit: [Here follows description of property.] [97]

XI.

The following described lands are now owned by the Bitter Root Valley Irrigation Company, and have not been released from the lien of said mortgage or deed of trust, and are now subject to the lien of said mortgage or deed of trust, under the terms, covenants, and provisions thereof, and to the rights and lien of your orators under and by virtue of said mortgage or deed of trust: [Here follows description of property.] [99]

And your orators have and claim a lien under and by virtue of the terms, covenants and provisions of said mortgage or deed of trust upon all of the said lands, irrigation system and water rights aforesaid, together with all the buildings and improvements thereon, and the rents, income, issues and profits

thereof, and all the privileges and appurtenances thereunto belonging or in anywise appertaining.
[101]

XII.

In addition to the land and property in said mortgage or deed of trust or hereinbefore specifically described the Bitter Root Valley Irrigation Company is the owner of other lands and property, which is subject to the lien of your orators under and by virtue of the said mortgage or deed of trust, and the terms and provisions thereof, which are owned by the Bitter Root Valley Irrigation Company at the date of said mortgage or deed of trust, or which have been acquired by said Company since the execution thereof, the description of which lands and property is unknown to your orators, and your orators pray that said Bitter Root Valley Irrigation Company may be required to make discovery of the same in this proceeding, and your orators pray further that they may have leave when the description of such lands and property is so discovered to include the same by way of amendment to this, your orators' bill of complaint, by proper description and to the same effect as though the same were specifically described herein.

XIII.

The Bitter Root Valley Irrigation Company is also the owner of the following described purchase money mortgages upon real estate situated in the County of Ravalli in the State of Montana, which said purchase money mortgages and the notes secured thereby were duly executed and acknowledged

by the makers thereof, and filed for record and recorded in the office of the Recorder of Ravalli County, in said State of Montana, the names of the makers of said mortgages, the dates thereof, the dates of recording thereof, and the document numbers and books and pages in which the same are recorded as aforesaid, and the amounts secured thereby, and the lands described therein are respectively as follows: [Here follows description of property.]
[102]

all of which purchase money mortgages and the notes secured thereby are subject to the lien of your orators under and by virtue of the terms and provisions of said mortgage or deed of trust.

XIV.

Your orators show that on January 1, 1916, default was made in the payment of bonds numbered from two hundred and one (201) to three hundred and fifty (350), inclusive, of the bonds of the Bitter Root Valley Irrigation Company, hereinabove described, then issued and outstanding as aforesaid, for the aggregate principal sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), and which became due and payable on said first day of January, 1916.

Your orators further show that on the date last mentioned, to wit, January 1, 1916, no funds were provided by said Bitter Root Valley Irrigation Company, or by any other person on its behalf for the payment of said principal sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), then due and payable upon the bonds maturing upon said

date as aforesaid, and that on said date demands were made for the payment of some of said bonds so due, but payment thereof was refused, and your orators aver that said default in the payment of said principal sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), so due upon said bonds which became due and payable on the first day of January, 1916, has continued from thence hitherto.

Your orators further show that the Bitter Root Valley Irrigation Company has made default in other respects in the performance of the terms, covenants and conditions in said mortgage or deed of trust of June 1, 1909, contained.

Your orators further show that on account of the default so made in the payment of said principal sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) which became due as aforesaid upon said bonds on the 1st day of January [103] 1916, there was, on to-wit, the 30th day of March, 1916, delivered to your orators a written request, signed by the holders of a majority in amount of the bonds secured by said mortgage or deed of trust and then outstanding, requesting your orators to declare the principal of all of the said bonds secured by said mortgage or deed of trust then outstanding to be due and payable immediately in accordance with the terms and provisions of said mortgage or deed of trust; and thereupon, on said date last mentioned, your orators, and each of them did, in compliance with said request and in conformity with the duty imposed upon your orators by the terms and provisions of said mortgage or deed of trust, declare

all of the bonds aforesaid, secured by said mortgage or deed of trust, then outstanding, to be immediately due and payable, and do furthermore by this, their bill of complaint, declare the principal of all of the said bonds to be, and the same now is, due and payable. And your orators further aver that there is now due and owing upon said bonds the entire said principal sum of Nine Hundred and Seventy-six Thousand Dollars (\$976,000.00), together with interest thereon at the rate of six per centum per annum from January 1, 1916, in accordance with the tenor and effect of said bonds and the terms and provisions of said mortgage or deed of trust, and that your orators are entitled to a foreclosure of the lien of said mortgage or deed of trust upon all of the property subject to the lien thereof as hereinabove set forth and to file this, their bill of complaint, for that purpose.

XV.

Your orators further show that no proceedings at law or suits in equity have been begun or commenced by your orators, or, as your orators are informed and believe, by any holder of any of the bonds secured by said mortgage or deed [104] of trust dated June 1, 1909, or of any of the coupons thereto attached, to enforce the payment of the sum so covenanted to be paid by the Bitter Root Valley Irrigation Company, defendant herein, under the terms of the said bonds and the said mortgage or deed of trust.

XVI.

Your orators further show that on or about the 3d

day of January, 1916, the defendant, Bitter Root Valley Irrigation Company, filed its voluntary petition in this honorable court praying that it might be adjudicated by the court to be a bankrupt within the purview of the acts of Congress relating to bankruptcy, and thereafter such proceedings were had in said court upon said petition that said Bitter Root Valley Irrigation Company was adjudicated bankrupt, as in said petition prayed, and on or about the 23d day of February, 1916, the defendant, F. C. Webster, was appointed trustee in bankruptcy for said Bitter Root Valley Irrigation Company and has duly qualified as such and is now so acting, and the said F. C. Webster, trustee in bankruptcy as aforesaid, is, as your orators are informed and believe, in possession of the said mortgaged property hereinabove mentioned; and your orators further show that upon application by your orators leave has been granted to your orators by this Honorable Court to include as defendant herein, the said F. C. Webster, as trustee in bankruptcy of the Bitter Root Valley Irrigation Company.

XVII.

Your orators further show that Hans B. Knudsen, Caroline Knudsen, Helen E. Carter, Max Bennett, Henry Bennett, Joseph Zitka and W. G. Parks, and the said F. C. Webster, Trustee in bankruptcy of Bitter Root Valley Irrigation Company, [105] who are hereby made parties defendant to this, your orators' bill of complaint, have or claim some interest in said mortgaged property, or some part or portion thereof, as purchasers, lien claimants,

or otherwise, the exact nature of the interest claimed by said defendants being unknown to your orators, but your orators aver that such interest of said defendants, or any or either of them, if any they have, is subject and inferior to the rights and lien of your orators upon said mortgaged property under and by virtue of the terms and provisions of the said mortgage or deed of trust.

XVIII.

And your orators further aver that upon approximately three thousand acres of the property described in said mortgage or deed of trust of June 1, 1909, and subject to the lien thereof, there have been planted by the Bitter Root Valley Irrigation Company orchards of apples and cherries; that the said orchards have been under cultivation from four to five years, by the Bitter Root Irrigation Company which Company has already expended in their planting and cultivation more than three hundred thousand dollars; that the trees have just reached or are approaching bearing; that if said orchards are not taken care of and irrigated during this season, the trees will die and the expenditures of the Bitter Root Valley Irrigation Company upon said orchards will be lost, and thereby the security for the payment of the indebtedness due your orators will be greatly and irreparably depreciated; that it will require at least thirty thousand dollars (\$30,000) to take care of and irrigate said orchards during the season of 1916, and that the preparatory work upon said orchards should commence at once.

And your orators further aver that a portion of

the business of the Bitter Root Valley Irrigation Company is the operation [106] and maintenance of an irrigation system and the delivery of water to settlers in the Bitter Root Valley; that the contracts for the sale of land and the purchase money mortgages for the purchase of lands of the Bitter Root Valley Irrigation Company contain the covenant that the Bitter Root Valley Irrigation Company will deliver water through its irrigation system to the settlers; that the failure to deliver water as required by said contract of sale, and purchase money mortgages would greatly and irreparably damage the property of the settlers and the value of the security for the indebtedness due your orators under these contracts of sale and purchase money mortgages.

And your orators further aver that the immediate and continued operation and maintenance of the irrigation system of the Bitter Root Valley Irrigation Company and the prompt delivery of water to the settlers in the Bitter Root Valley is a matter of great public necessity; that the failure of said irrigation system will bring irreparable loss and injury, not only to the property so mortgaged to your orators, but to the property of many other innocent people, settlers in the Bitter Root Valley, and dependent upon said irrigation system for a supply of water and the very existence of their farms and orchards; and that the failure of said irrigation system or delay in delivering water when required would be a great disaster to the inhabitants and settlers of Ravalli County and to the State of Montana.

And your orators further aver that the value of all of the property, including the irrigation system, subject to the lien of said mortgage or deed of trust of June 1, 1909, is far less than the face amount of the bonds due and unpaid secured by said mortgage or deed of trust; that excepting certain personal property of little or no value, and the property subject to the prior lien of the mortgage of June 1, 1909, there is no property or assets of the Bitter Root Valley Irrigation Company in the hands of F. C. Webster as Trustee in bankruptcy; [107] that F. C. Webster as Trustee in bankruptcy has therefore no interest in putting said irrigation system in condition to deliver water or in operating and maintaining the same, or in taking care of and irrigating the orchards of the Bitter Root Valley Irrigation Company, and that said F. C. Webster, as Trustee in Bankruptcy as aforesaid, is without funds or means to place said irrigation system in condition to deliver water in the spring of 1916 or thereafter to maintain and operate the same; and that the said F. C. Webster, as Trustee in Bankruptcy is entirely without credit to borrow money for purposes of putting said irrigation system in condition to deliver water or to operate and maintain the same, or to take care of and irrigate said orchards.

Your orators further aver that said mortgage or deed of trust of June 1, 1909, provides that upon filing a bill in equity or upon commencement of any judicial proceeding to enforce any right of the trustees or of the bondholders under said indenture, the trustees shall be entitled as a matter of right to the

appointment of a receiver of the property subject to said indenture and of the tolls, earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer.

And your orators further aver that by reason, among others, of the foregoing facts and circumstances, your orators allege that the interference of a court of equity for the protection of their rights and the rights of all parties in interest herein is immediately required and that there is necessity for the immediate appointment of a receiver to take charge of and preserve the property of said Bitter Root Valley Irrigation Company subject to said mortgage or deed of trust dated June 1, 1909; to put the said irrigation system of the Bitter Root Valley Irrigation Company in position to deliver water immediately, to maintain and operate said irrigation system for the protection of settlers in the Bitter Root Valley in accordance with their rights under contracts with said Company; [108] to take care of and irrigate the orchards of the Bitter Root Valley Irrigation Company, and to collect and receive and properly to appropriate the income of and from said property of the Bitter Root Valley Irrigation Company under the orders of this court to be made from time to time until its final decree in the premises.

And your orators further aver that the matter in controversy herein exceeds the sum of five thousand dollars exclusive of interests and costs.

XIX.

Forasmuch, therefore, as your orators are without remedy in the premises according to the strict rules of the common law and can only have relief in a court of equity, where matters of this kind are properly cognizable, your orators pray the aid of this Honorable court to the end:

(1) That the said defendants may be required to make answer severally unto all and singular the matters hereinbefore stated and charged, as fully and particularly as if thereunto particularly interrogated, but not under oath, answer under oath being hereby expressly waived.

(2) That an accounting may be taken of all property subject to the lien of said mortgage or deed of trust dated June 1, 1909, and that said mortgage or deed of trust may be decreed to be a valid lien upon all and singular the lands, buildings, structures, irrigation systems, water rights, contracts, agreements, purchase money mortgages, notes, choses in action, and other property of every kind and description, subject to the lien thereof as hereinbefore alleged and shown, together with all the appurtenances, rights and privileges thereunto belonging or in any wise appertaining, including the income, rents, issues and profits thereof and all improvements and additions thereto made since the date of said mortgage or deed of trust. [109]

(3) That the Bitter Root Valley Irrigation Company and the said other defendants herein named may be decreed to pay, by a short day to be fixed by this Honorable court, unto your orators, for the

use and benefit of the bondholders under the aforesaid mortgage or deed of trust, the principal of all of said bonds, and also all interest due and payable on said bonds, together with all costs and expenses in this suit incurred and contracted, including the compensation of your orators and their attorneys and solicitors, and all other indebtedness due under the terms and provisions of said mortgage or deed of trust, and in default thereof that the Bitter Root Valley Irrigation Company, and all persons and corporations claiming under it, may be forever barred and foreclosed of all equity of redemption and claim in and to said mortgaged premises and property and every part and parcel thereof, and that all and singular the said mortgaged premises and property, together with the appurtenances and effects, rights and privileges thereunto belonging or appertaining, in said mortgage or deed of trust described, or subject to the lien thereof as hereinbefore set forth, may be sold under a decree of this Honorable court and that the purchase money, proceeds, or avails of any such sale may be applied as follows, to wit:

First. To the payment of the costs, expenses, fees and other charges of such sale and all proceedings leading to such sale, including reasonable compensation to your orators and to their attorneys or solicitors, and to the payment of all expenses and liabilities incurred and advances or disbursements made by your orators or either of them, or by any holders of bonds, under the terms of said mortgage or deed of trust, and then to the payment of all

taxes, charges, assessments or liens prior to the lien of said mortgage or deed of trust, if any, except the superior liens and any taxes, assessments or other charges subject to which such sale shall be made, if any. [110]

Second. Any balance then remaining, to the payment of the whole amount then owing or unpaid upon the bonds secured by said mortgage or deed of trust for principal and interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon said bonds, then to the payment of said principal and interest, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest and the accrued and unpaid interest, in accordance with the terms and provisions of said mortgage or deed of trust.

Third. To the payment of the surplus, if any, to to the Bitter Root Valley Irrigation Company, its successors or assigns, or to whomsoever this Honorable court shall decree to be lawfully entitled to receive the same.

That upon any such sale any purchaser, for or in settlement or payment of the purchase price of the property purchased, may be permitted to use and to apply any of said bonds secured by said mortgage or deed of trust, at par, and any matured and unpaid interest coupons thereto attached, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the

payment thereof out of the net proceeds of said sale to the owner of said bonds and coupons as his ratable share of such net proceeds after the deduction of all costs, expenses, compensations, and other charges, and that upon such application such purchaser may be credited on account of such purchase price payable by him with the portion of such net proceeds that shall be applicable to the payment of and that shall have been credited upon the payment of the bonds and coupons so presented, and that at any such sale any bondholders may bid for and purchase said property and make payment therefor as aforesaid and upon compliance with the terms of sale may hold, retain and dispose of such property without [111] further accountability; and your orators further pray that an accounting may be taken of the bonds secured by said mortgage or deed of trust, and of the amount due upon said bonds for principal and interest, and of the amounts due for the expenses, liabilities and advances of your orators and of their attorneys and solicitors herein; and that the Bitter Root Valley Irrigation Company and all other defendants herein and all persons claiming by, through or under them or either of them may be decreed to make such transfer or conveyance to the purchasers of said property at any sale to be ordered by this Honorable court as may be necessary and proper to put them or either of them in possession and control of said property; and that a receiver may be appointed, according to the custom and practice of this Honorable court, with the usual powers of receivers in like cases, of all and singu-

lar the property of the Bitter Root Valley Irrigation Company subject to said mortgage or deed of trust of June 1, 1909, together with all of the tolls, earnings, income, revenue, rents, issues and profits thereof, and with full power and authority to take possession of all of said property of the Bitter Root Valley Irrigation Company, to put said irrigation system in condition to deliver water, to operate and maintain the same, and to cultivate and irrigate the orchards of the Bitter Root Valley Irrigation Company and to collect and receive the tolls, earnings, income, revenue, rents, issues and profits thereof, and to apply the same under the orders and decrees of this court, and that the said Bitter Root Valley Irrigation Company and the said F. C. Webster, as Trustee in bankruptcy as aforesaid, may be required to transfer and turn over to such receiver all of said properties; and that your orators may have such other and further relief in the premises as the nature of the circumstances of this case may require and to this Honorable court shall seem meet.

[112]

XX.

May it please your Honor to grant unto your orators a writ or writs of subpoena, to be directed to the defendants, Bitter Root Valley Irrigation Company, F. C. Webster, Trustee in bankruptcy of the Bitter Root Valley Irrigation Company, Hans B. Knudsen, Caroline Knudsen, Helen E. Carter, Max Bennett, Henry Bennett, Joseph Zitka and W. G. Parks, therein and thereby commanding them and each of them, at a certain time and under a certain

penalty to be named, to be and appear before your Honor in this Honorable court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to, abide by and perform such other and further orders and decrees as this Honorable court may enter herein.

FIRST TRUST AND SAVINGS BANK,
Trustee,

[Corporate Seal]

By EMILE K. BOISOT,
President,
EMILE K. BOISOT,
Trustee.
Complainants.

GARRARD B. WINSTON,
HENRY C. STIFF,

Solicitors for Complainants. [113]

United States of America,
District of Montana,
Missoula County,—ss.

Garrard B. Winston, being first duly sworn, deposes and says that he is the agent of and one of the solicitors for First Trust and Savings Bank and Emile K. Boisot, the above named complainants; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true; that the seal affixed to said bill of complaint is the

corporate seal of said First Trust and Savings Bank, and was so affixed by its authority.

GARRARD B. WINSTON,

Subscribed and sworn to before me this 8th day of April, A. D. 1916.

THOMAS NELSON MARLOWE,

[Notarial Seal]

Notary Public in and for the State of Montana, Residing at Missoula, Montana.

My commission expires March 9th 1917. [114]

(Endorsed as follows:)

In the District Court of the United States, for the District of Montana. In Equity—No. 71. First Trust and Savings Bank and Emile K. Boisot, Trustees, Complainants, vs. Bitter Root Valley Irrigation Company, F. C. Webster, Trustee in Bankruptcy of Bitter Root Valley Irrigation Company, Hans B. Knudsen, Caroline Knudsen, Helen E. Carter, Max Bennett, Henry Bennett, Joseph Zitka and W. G. Parks, Defendants. Bill of Foreclosure. Garrard B. Winston, Winston, Payne, Strawn & Shaw, Henry C. Stiff, Solicitors for Complainants. Filed April 8, 1916. Geo. W. Sproule, Clerk. [115]

Thereafter, on September 4, 1916, the Answer of defendants Hans B. Knudsen and Caroline Knudsen was duly filed herein, in the words and figures following, to wit: [116]

*In the District Court of the United States, for the
District of Montana.*

FIRST TRUST AND SAVINGS BANK, and
EMILE K. BOISOT, Trustees,
Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in Bank-
ruptcy of Bitter Root Valley Irrigation Com-
pany, HANS KNUDSEN, CAROLINE
KNUDSEN, HELEN E. CARTER, MAX
BENNETT, HENRY BENNETT, JOSEPH
ZITKA and W. J. PARKS,
Defendants.

Answer.

Come now the defendants Hans B. Knudsen and Caroline Knudsen and expressly saving and reserving unto themselves all exceptions heretofore taken, and allowed, to the order of the above styled court in overruling and denying the special appearance of these defendants challenging the jurisdiction of this court over them and praying that the order for appearance of nonresident defendants served upon these answering defendants should be quashed and held to be of no force and effect to give this court jurisdiction of either the person or property rights of these defendants, and now specially objecting to the jurisdiction of this court over them upon each and all of the grounds assigned in said special appearance, and saving and reserving unto themselves

all manner of exception thereto and to the jurisdiction of this court, and appearing only because of the overruling of their plea to the jurisdiction of this court and not otherwise;

I.

Admit the allegations of paragraphs I, II, III, X, XV and XVI of the bill of complaint of complainants herein filed. Also admit that on or about June 1, 1909, there was signed by the Bitter Root Valley Irrigation Company and delivered to complainants a [117] written instrument a copy whereof appears on pages 1 to 84 inclusive in paragraph numbered IV of complainants' bill of complaint; and admit that the property alleged in paragraph IV to be situated in Ravalli County was and is situated within said county. Admit that complainants accepted the trust assumed to be created in said written instrument; admit that the Bitter Root Valley Irrigation Company issued bonds as of the dates and of the numbers and in the amounts as alleged in paragraph IV of the complainants' bill of complaint; admit that such bonds were delivered to the complainants and that said bonds aggregated the par value of \$1,376,000; admit that all of the bonds and the interest coupons alleged in said paragraph IV to be outstanding and unpaid are in fact outstanding and unpaid. Admit that these answering defendants claim some interest in and to the mortgaged property.

II.

As to paragraphs numbered VI, VII, VIII, IX, XI, XII, XIII, and XIV of the bill of complaint on file herein, these answering defendants deny that

they have any knowledge or information sufficient to form a belief as to the allegations therein contained and therefore demand proof thereof.

III.

These answering defendants specifically deny that their interest in and lien upon the premises described in the bill of complaint on file herein is either inferior or subject to the rights or liens of complainants upon said property either under and by virtue of the terms and provisions of said mortgage or deed of trust or otherwise or at all.

IV.

And save as above specifically admitted or denied in this answer, these answering defendants generally deny the allegations contained in complainants' bill of complaint.

V.

Further answering and by way of defense to the maintenance and prosecution of this action as against these answering defendants [118] or the rights or claimed rights of them or either of them, and as against the maintenance and prosecution of this action for the determination of the rights or claimed rights or liens or claimed liens of these answering defendants or either of them, they respectfully show unto this honorable court as follows:

1. That on the 24th day of June, 1915, the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli was and for a long time prior thereto had been and now is a court of general jurisdiction, created, organized and existing under and by virtue of the constitution

and laws of the State of Montana, and as such court of general jurisdiction during all of said times has had and now has jurisdiction of all matters cognizable under the common law by courts either of law or of equity and particularly having jurisdiction of actions in form either legal or equitable or both legal and equitable wherein was or is sought in any manner or form the determination of questions of conflicting interests in and to real and personal property within the limits of the County of Ravalli, State of Montana; that said Court was at all of said times and now is a court of record and was at all of said times and now is fully authorized and empowered and had and now has full and complete jurisdiction under the constitution and laws of the State of Montana to adjudicate fully and finally as between any and all parties claiming rights, interests or liens of any kind, character or description of in and to real property or personal property within the limits of the State of Montana and to make and enforce all orders necessary and proper in connection therewith, and particularly was said court and is it now vested under the constitution and laws of the State of Montana with full and complete power, authority and jurisdiction to adjudicate with reference to the claims advanced or to be advanced in connection with the matters sought by the complainants herein to be made the subject of this bill of complaint with reference to the claims, interests and [119] liens asserted by these answering defendants relating to the real property and personal property of the Bitter Root Valley Irrigation Com-

pany and with reference to the real and personal property in the bill of complaint herein filed; and also with reference to any matters or claims in any manner connected with the foregoing and asserted or to be asserted by any person or persons whomsoever, or any corporation or corporations whatsoever.

2. That on the 24th day of June, 1915, these answering defendants as plaintiffs commenced in the aforesaid District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli and against the Bitter Root Valley Irrigation Company, a Montana corporation, Emile K. Boisot, complainant named in the bill of complaint on file in this action, First Trust and Savings Bank, complainant named in the bill of complaint on file in this action, and against other persons and corporations interested in the affairs and property of and connected with the said Bitter Root Valley Irrigation Company, as defendants, an action wherein these answering defendants as such plaintiffs alleged among other things that said Bitter Root Valley Irrigation Company by succession to the rights of prior holders thereof became the owner of large quantities of real property situated within the County of Ravalli, State of Montana, and had by succession, and adoption of contracts, plans and agreements of its corporate predecessor in interest, assumed the formation, construction and operation of a so-called irrigation district or system to be composed of a total of 40,000 acres of land and of water rights for the irrigation thereof, the irrigation to be furnished by means of waters naturally flowing and

artificially stored and collected and thereafter to be delivered onto and upon said 40,000 acres of land by means of one main and a large number of branch canals, laterals and ditches. That in and by said complaint these answering defendants further charged that as an inducement to the purchase of lands of and from the said Bitter Root Valley Irrigation Company it had caused to be represented to the plaintiffs therein and to other contemplating purchasers of land from [120] it, that an irrigation system to the extent of 40,000 acres was so to be formed, constructed and operated and that water therefor was to be supplied in the manner above set out; and that said Bitter Root Valley Irrigation Company promised and agreed to and with these answering defendants and with others similarly situated, that said corporation would acquire not only the above-mentioned 40,000 acres of land, but would also acquire water rights sufficient to irrigate the whole thereof, and further promised and agreed with these answering defendants and with others similarly situated, that it would maintain said water right as proposed to be acquired and furnish therefrom through main and branch canals and laterals and ditches to be constructed by it to these answering defendants and to others similarly situated a water right in perpetuity or a right to the perpetual use of water in a designated quantity for the purpose of irrigation of lands purchased of and from it and located within the proposed district as above outlined the same to be furnished for the sum of \$1.25 per acre of irrigable lands, payable annually;

and that said corporation did further in that connection promise and agree with these answering defendants and others similarly situated that it would provide a means for the up-keep and maintenance of the water rights so proposed to be acquired and of the system of storage and diversion of said water rights so that the perpetual right to the use of waters for said land should be assured to all purchasers of lands from it, including these answering defendants, and proposed in that connection and for the accomplishment of that end, to assess and tax each and every acre of irrigable lands sold or unsold by it in said system, to wit, lands to the extent of 40,000 acres, with the sum of \$1.25 per acre, the sum of money so realized to be used only for the purpose of maintenance and up-keep of the system as above outlined and for no other purposes. That in said action it was further charged by these answering defendants that in pursuance of such representations said Bitter Root Valley Irrigation Company had proceeded with the acquisition of lands and water rights with the construction of a system for the storage [121] and distribution of said water and upon the strength of the covenants and agreements as heretofore alleged, had sold or contracted for sale of and from said total acreage of 40,000 acres approximately 22,000 acres of lands to a great number of individuals and corporations throughout the United States, including these answering defendants, for which said 22,000 acres of land said Bitter Root Valley Irrigation Company had been assuming to furnish water as covenanted and for which service

it had been for a large number of years collecting the \$1.25 per acre charge as above mentioned; and that said corporation in addition to said lands had been irrigating over a large number of years of and from the above-mentioned waters approximately 3,500 acres of land situated within the said district of 40,000 acres of land, but for which water and the use thereof, said Bitter Root Valley Irrigation Company had not been paying the aforesaid \$1.25 per acre charge nor had said Bitter Root Valley Irrigation Company been paying as covenanted and agreed the aforesaid charge of \$1.25 per acre for unsold lands situated within said district. That further in and by the complaint filed in the action in the aforesaid district court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli, it was alleged that said Bitter Root Valley Irrigation Company had not only failed to make payments of \$1.25 per acre on lands held and owned by it and situated within said district and on all lands irrigated by it and situated within the said district but that it had also squandered and dissipated the funds raised and furnished by the payments of the \$1.25 per acre charge on lands sold to others and had used such funds for purposes other than those incident to the up-keep and maintenance of the system for the storage and diversion of the aforesaid waters. That in and by said action and the complaint filed therein, it was alleged that the said Bitter Root Valley Irrigation Company had failed to acquire water rights sufficient for the purpose of the per-

formance of its covenants hereinbefore set out, and had failed to construct an irrigation system sufficient in size to irrigate lands to be embraced within said district or system, and had failed to use proper care to even maintain the system as actually constructed [122] in proper condition for the service contemplated and proposed thereby, but on the contrary had allowed the same to depreciate to such an extent and had constructed the same originally so improperly as that there was an immediate demand for the expenditure of large sums of money for the purpose of restoration of the irrigation system to a proper condition for service and for the expenditure of further large sums of money for the completion of said system to the degree covenanted by the said Bitter Root Valley Irrigation Company. That in and by the said action and complaint therein filed, it was further alleged that said Bitter Root Valley Irrigation Company was then insolvent and unable to meet its outstanding obligations and was without funds and unable to make needed repairs in said system for the storage and diversion of the above-mentioned waters and without funds and unable to complete the construction of said system as originally covenanted and that said Bitter Root Valley Irrigation Company was without funds to replenish the wasted and squandered funds which constituted a trust fund for the maintenance and up-keep of said system for the storage and diversion of the above-mentioned waters; that said Bitter Root Valley Irrigation Company did not intend to carry out or perform further any of its covenants and obligations

as above outlined and that it at that time contemplated and threatened the institution of voluntary bankruptcy proceedings for the purpose of escaping the results of any litigation of the character of this action and for the purpose of escaping further compliance with its covenants and obligations as above set out. That further in and by said action and the complaint filed therein it was alleged that the funds realized from the \$1.25 per acre water charge as above set out, were agreed to be regarded as a trust fund for the up-keep and maintenance of the aforesaid system and were by virtue of the covenants and agreements of the parties and the facts and circumstances heretofore alleged in fact a trust fund for such purpose; and that the \$1.25 per acre charge above mentioned as due and payable from the said Bitter Valley Irrigation Company upon all unsold [123] lands and upon lands irrigated by it was likewise to be regarded upon each and all the grounds above set forth as a trust fund; and these answering defendants therein alleged that by and because of the existence of such trust fund and of its wasting and squandering by the Bitter Root Valley Irrigation Company as above set forth, these answering defendants and others similarly situated had by virtue of the premises and by operation of law and equity a first and prior lien and claim upon all of the assets of every kind, character and description of the Bitter Root Valley Irrigation Company to secure the restoration and establishment of said trust fund and as security for the performance of each and all of the covenants and agreements of said

Bitter Root Valley Irrigation Company as heretofore alleged. That further in and by said action and the complaint therein filed, it was alleged that the complainants herein Emile K. Boisot and First Trust and Savings Bank and the bondholders in the bill of complaint in this action referred to, each and all took the bonds and deed or trust given to secure the payment of the same with notice of the covenants and agreements of the said Bitter Root Valley Irrigation Company herein above-mentioned, and that the lien if any created by the deed of trust given in connection with the bond issue of \$1,376,000 in the bill of complaint herein referred to was inferior in point of time and right to the lien claimed by these answering defendants on behalf of themselves and of all others similarly situated. That further in and by said action and the bill of complaint therein filed, it was alleged that pursuant to the covenants and agreements of the Bitter Root Valley Irrigation Company with its purchasers, it was necessary that the irrigation system should be completed as contemplated and covenanted and that to that end and to secure the enforcement of the lien claimed by these answering defendants as aforesaid, required that a receiver of the properties and assets of said Bitter Root Valley Irrigation Company should be appointed and that receiver's certificates should be issued and that the assets [124] of the Bitter Root Valley Irrigation Company should be marshalled and placed in the custody of the Court for the purpose of completing the irrigation system as contemplated and covenanted, for the purpose of the

full and complete performance of the covenants of said Bitter Root Valley Irrigation Company with the purchasers of lands from and under it, and for the purpose of insuring to all purchasers of lands of and from said company, including plaintiffs therein the right to the perpetual use of water for the irrigation of their lands and that to secure such results it was necessary that the lands of said Bitter Root Valley Irrigation Company should be sold under order of Court. That further in and by said action and the complaint therein filed it was alleged that these answering defendants instituted said action on behalf of all purchasers of land of and from the Bitter Root Valley Irrigation Company for the reason that their number was so great that they could not practically be joined as plaintiffs therein and for the reason that the relief sought was one of public interest and one relating to all similarly situated.

3. That thereafter and under date of July 14, 1915, the said Bitter Root Valley Irrigation Company made its general appearance in said action pending in the aforesaid State Court and thereafter and under date of January 31, 1916, the said Emile K. Boisot and First Trust and Savings Bank made their special appearance in said action challenging the jurisdiction of the State Court to render judgment therein affecting their interest; and thereafter and under date of April 5, 1916, and prior to the institution of this action in this District Court of the United States for the District of Montana, the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli,

after argument of said special appearances challenging its jurisdiction duly made and entered its order overruling and denying the same, and assumed and declared its assumption of jurisdiction of the action so far as it concerned said Emile K. Boisot and said First Trust and Savings Bank and assumed [125] and declared its assumption of jurisdiction to determine all questions of their rights or interests in the property of Bitter Root Valley Irrigation Company.

4. That the real property and personal property of Bitter Root Valley Irrigation Company referred to in the complaint filed in the action pending in the aforesaid State Court was and is, so these answering defendants state upon their information and belief the same property as that specifically described in the bill of complaint herein filed and that the rights and interests of said Emile K. Boisot and First Trust and Savings Bank referred to in the complaint filed in the aforesaid action pending in the said State Court and the determination whereof was therein sought are the same rights and interests as are sought to be determined in this action in the United States Court, and that the rights and interests of these answering defendants asserted and sought to be determined in said court are the same rights and interests which are challenged by the proceeding instituted by the said Emile K. Boisot and said First Trust and Savings Bank in this United States Court. That this present action in the United States Court was not commenced until on or about the 8th day of April, 1916, and until long after the institution of

the aforesaid State Court suit and of the acquisition of jurisdiction therein over and of the persons and property of said Emile K. Boisot and said First Trust and Savings Bank and that this present action pending in this United States Court was commenced by the complainants herein after and with full knowledge of the institution of the aforesaid State Court suit and of the acquisition and claim of jurisdiction of the said Court over their persons and property and with full knowledge of the purposes and objects of the aforesaid State Court suit; and that this present action pending in this United States Court was instituted by the complainants herein for the purposes of attempting to defeat the jurisdiction of the aforesaid State Court and to secure a determination of their rights in a tribunal other than that which first acquired jurisdiction of the subject matter of this present suit. [126]

5. That as appears from the complaint filed in the action pending in the aforesaid State Court it is probable or possible that at some stage of the litigation therein the appointment of a receiver will be necessary to accomplish the execution of the judgment and decree of said State Court and that the receiver so to be appointed must be one of the selection of said State Court and subject alone to its jurisdiction. That in the course of the prosecution of the aforesaid action now pending in the State Court all matters and issues presented in this subsequently commenced and pending action in this United States Court can be as fully and fairly determined therein as herein and that it is the in-

tention of these answering defendants Hans B. Knudsen and Caroline Knudsen to prosecute and determine in said State Court the issues therein raised and to determine the rights and claims not only of the defendants Emile K. Boisot and First Trust and Savings Bank but of all others in any manner or fashion having or claiming any interest in and to said property.

6. That subsequently to the institution of the above-mentioned action of the State Court the said Bitter Root Valley Irrigation Company did on the 3d day of January, 1916, file in the District Court of the United States for the District of Montana, its voluntary petition for adjudication as a bankrupt and thereafter and on the same date, an order was made adjudging said corporation to be a bankrupt, and thereafter, and under date of February 23, 1916, one F. C. Webster was appointed as trustee in bankruptcy of said Bitter Root Valley Irrigation Company, and the said Webster is now the duly appointed, qualified and acting trustee in bankruptcy of said corporation.

WHEREFORE these answering defendants pray that by virtue of the circumstances aforesaid and of the comity recognized and existing between courts of concurrent jurisdiction that this United States Court shall either:

1. Proceed no further in this present pending action in any manner, or at all, and shall permit said action to remain in *status quo* and subject to further orders relative to property now in the [127] possession of its receiver; or,

2. Shall proceed in this present action only with the express reservation that therein shall be determined the rights of complainants Emile K. Boisot and First Trust and Savings Bank only against and with reference to said Bitter Root Valley Irrigation Company and said F. C. Webster, trustee in bankruptcy, but not with reference to the rights or claimed rights of any others of the defendants herein named and particularly not with reference to the rights or claimed rights of these answering defendants and others similarly situated, and with the further express reservation that the determination of the rights of said Emile K. Boisot and said First Trust and Savings Bank with respect to said Bitter Root Valley Irrigation Company and its properties and with respect to F. C. Webster as trustee thereof shall be in all respects subject and subordinate to any orders which may hereafter be made by the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli with reference either to the complainants herein or to the defendants Bitter Root Valley Irrigation Company, or to F. C. Webster as trustee, and with reference to the property and assets of said Bitter Root Valley Irrigation Company; and with the further express reservation that the possession of the receiver by this Court heretofore appointed shall be likewise subordinate to any orders of the State Court which may be made with reference to the property and assets of said Bitter Root Valley Irrigation Company;

3. That this Court shall authorize and direct said

F. C. Webster as trustee in bankruptcy of said Bitter Root Valley Irrigation Company to enter an appearance in the aforesaid State Court for the purpose of representing the interests of said bankrupt in the matters therein involved, and,

4. That these defendants have and recover their [128] costs of suit thus far herein expended.

(Signed) D. S. WEGG,
GEO. T. BAGGS,
R. F. GAINES,

As Attorneys for Defendants Hans B. Knudsen and
Caroline Knudsen.

State of Montana,
County of Silver Bow,—ss.

R. F. Gaines, being first duly sworn, says:

I am one of the attorneys for the defendants named as answering defendants in the foregoing answer and make this verification on their behalf for the reason that defendants are not now in the County of Silver Bow, State of Montana, wherein resides affiant their said attorney; I have read the foregoing answer and know the contents thereof, and the matters and facts therein stated are true to the best of my knowledge, information and belief.

(Signed) R. F. GAINES.

Subscribed and sworn to before me this 2d day of
September, A. D. 1916.

[Seal] (Signed) P. B. GOODWIN,
Notary Public for the State of Montana, Residing at
Butte, Montana.

My commission expires June 13, 1917.

[Endorsed]: No. 71. U. S. District Court, District of Montana. First Trust and Savings Bank, and Emile K. Boisot, Trustees, Complainants, vs. Bitter Root Valley Irrigation Company et al., Defendants. Answer of Defendants Hans B. Knudsen and Caroline Knudsen. Filed Sept. 4th, 1916. George W. Sproule, Clerk. [129]

Thereafter, on September 12, 1916, Motion to Strike from the Answer of Hans B. Knudsen and Caroline Knudsen was duly filed herein, in the words and figures following, to wit. [130]

In the District Court of the United States for the District of Montana.

**FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,
Complainants,**

vs.

**BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in Bank-
ruptcy of the BITTER ROOT VALLEY IR-
RIGATION COMPANY, HANS B. KNUD-
SEN, CAROLINE KNUDSEN, HELEN E.
CARTER, MAX BENNETT, HENRY BEN-
NETT, JOSEPH ZITKA and W. J. PARKS,
Defendants.**

**Motion to Strike from the Joint Answer of Hans B.
Knudsen and Caroline Knudsen.**

Come now the complainants in the above-entitled cause and move the Court for an order striking out

of and from the joint answer of the defendants Hans B. Knudsen and Caroline Knudsen all that portion thereof embraced within paragraph No. V and beginning with the words "further answering" on page two and ending with the words "qualified and acting trustee in Bankruptcy of said corporation," on page eleven of said answer, the matter so contained in said paragraph V being subdivided into paragraphs or clauses numbered 1, 2, 3, 4, 5 and 6, and being that portion of the said answer of the said defendants wherein is alleged and set forth the institution and pendency of a certain action in the District Court of the Fourth Judicial District of the State of Montana in and for Ravalli County and challenging the jurisdiction of this Court to hear, adjudicate and determine matters and things therein alleged to be before the said State Court for adjudication and determination.

This motion is made and based upon the reasons and [131] grounds following:

1. That the same is irrelevant.
2. That the same is redundant.
3. That the same is immaterial.
4. That the matter moved to be stricken and the whole thereof is sham and frivolous.

WINSTON, PAYNE, STRAWN & SHAW
and

HENRY C. STIFF,

Attorneys for Complainants.

Service by copy of the foregoing Motion to Strike

is hereby accepted and acknowledged this 7th day of September, 1916.

D. S. WEGG,
GEO. T. BAGGS,
R. F. GAINES,

Attorneys for Defendants Hans B. Knudsen and
Caroline Knudsen.

[Endorsed]: No. 71. In the U. S. District Court of the District of Montana. First Trust and Savings Bank et al., Trustees, Complainants, vs. Bitter Root Valley Irrigation Company et al., Defendants. Motion to Strike from the Answer of Hans B. Knudsen and Caroline Knudsen. Filed Sept. 12, 1916. George W. Sproule, Clerk. By Harry H. Walker, Deputy. [132]

Thereafter, on October 16, 1916, the Memo Decision of the Court, granting plaintiff's Motion to Strike from the Answer of Hans B. Knudsen and Caroline Knudsen, was duly filed herein, in the words and figures following, to wit: [133]

**Opinion on Motion to Strike Portions of Answer of
Hans B. Knudsen and Caroline Kundsens.**

United States District Court, Montana.

FIRST ETC. BANK et al.

vs.

BITTER ETC. CO. et al.

Defendant company in this court was adjudicated a voluntary bankrupt, and the appointed trustee took possession of its property. Plaintiffs, bond-

holders' trustees, by leave commenced this suit to foreclose the security on certain of said property, making defendants the bankrupt, the trustee and certain persons alleged to assert claims, but inferior to plaintiffs', to the property.

Therein the bankrupt's trustee was appointed receiver, and as such possesses the property. Said certain persons answered that more than four months prior to initiation of bankruptcy proceedings, they had commenced suit in a court of this State, wherein they allege that by virtue of land and water contracts in which the bankrupt was vendor and they were vendees, all said property is impressed with a trust and lien in their behalf and superior to that of plaintiffs, and that a receiver is necessary to take possession of said property to effectuate the trust and lien. They further answer that the plaintiffs and bankrupt were made defendants and appeared in said suit. The prayer is that this Court in recognition of comity suspend proceedings until the State Court has determined said suit, and if and when the State Court appoints a receiver, that this court surrender the property to him. Plaintiff move to strike the aforesaid defense. Granted.

The suit in the State Court is to determine rights asserted by some creditors of the bankrupt in and to some of the latter's [134] property. The proceedings in this court in their entirety are to determine the rights of all creditors of the bankrupt in and to all the latter's property. Of some of the matters involved herein the State Court has no jurisdiction, exclusive jurisdiction thereof being in

this court, finding origin in the Constitutional provision for bankruptcy. These latter cannot be fully adjusted without adjustment of those asserted in the State Court, and it makes for convenience, speed and justice to have the whole dealt with by one court. The rule of comity yields thereto. It is believed the rule of *Moran vs. Sturges*, 154 U. S. 284, applies, viz., that where the jurisdictions are not concurrent and co-ordinate—where that of one is exclusive—the Court first obtaining actual possession of the *res* is entitled to proceed. And having possession and jurisdiction, the property is withdrawn from the jurisdiction of all other courts, this court to hear and determine all questions relating to title, possession and control of the property.

See *Murphy vs. Co.*, 211 U. S. 568.

Wabash Ry. Co. v. College, 208 U. S. 38, 611.

It will be noted that in the first case cited herein the State Court had appointed a receiver before the Federal Court took possession of the property, and in the last case cited the suit in the former court to foreclose a claim of lien had been commenced before the suit in the latter court was instituted and possession taken of the property. And in both it was held the Federal jurisdiction prevailed.

Metcalf vs. Barker, 167 U. S. 165, is the reverse of the instant case. The situation herein is not affected for that foreclosure proceedings are permitted by the Court in bankruptcy and a receiver appointed. The Court is the same, its possession is unchanged, and the foreclosure is but ancillary and dependent—more for convenience than aught

else. See *Bear, etc. Co. vs. Walsh*, 198 Fed. 352, and cases therein cited.

BOURQUIN, J.

Filed October 16, 1916. (Signed) Geo. W. Sproule, Clerk. By (Signed) H. Walker, Deputy.
[135]

Thereafter, on October 16, 1916, a minute entry sustaining Motion to Strike, was duly entered herein, in the words and figures following, to wit:

**Order Sustaining Motion to Strike from Answer of
Hans B. Knudsen and Caroline Knudsen Peti-
tion for Appeal.**

*In the District Court of the United States, for the
District of Montana.*

No. 71.

FIRST TRUST & SAVINGS BANK et al.

vs.

BITTER ROOT V. I. CO. et al.

This cause heretofore submitted on the motions to strike from the answers herein, came on at this time for judgment and decision. Thereupon the Court, after due consideration, ordered that the motions to strike be and the same hereby are granted.

GEO. W. SPROULE,

Clerk.

Attest a true copy of Minute Entry, October 16,
1916.

[Seal]

GEO. W. SPROULE,
Clerk.

By (Signed) Harry H. Walker,
Deputy Clerk. [136]

Thereafter, on November 9, 1916, a Petition for
Appeal was duly filed herein by defendants Hans B.
Knudsen and Caroline Knudsen, in the words and
figures following, to wit: [137]

.. —————
*In the District Court of the United States, District
of Montana.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in
Bankruptcy of BITTER ROOT VALLEY
IRRIGATION COMPANY, HANS B.
KNUDSEN, CAROLINE KNUDSEN,
ELLEN E. CARTER, MAX BENNETT,
HENRY BENNETT, JOSEPH ZITKA and
W. G. PARKS,

Defendants.

Petition to U. S. District Judge for Allowance of Appeal.

The above-named appellants and defendants, Hans B. Knudsen and Caroline Knudsen conceiving themselves aggrieved by the order and decree entered on October 16, 1916, in the above-entitled proceeding, whereby there was upon motion of appellees and complainants, First Trust and Savings Bank and Emile K. Boisot, Trustees, stricken from the answer of said Hans B. Knudsen and Caroline Knudsen the portion thereof which pleaded the prior acquisition by the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli of jurisdiction over the parties and *res* involved in this action, do hereby appeal from said order and decree to the Circuit Court of Appeals of the United States, Ninth Circuit, and do hereby petition and pray for the allowance of this appeal and that a citation may issue in connection therewith, and do further pray that a transcript of the records and proceedings and papers upon which [138] said order and decree was made, duly prepared and authenticated may be sent to said Circuit Court of Appeals of the United States Ninth Circuit, at San Francisco, California, and that upon a consideration of said appeal that the order and decree appealed from shall be reversed by said Circuit Court of Appeals. Said appellants have hereto attached

and made a part hereof their assignments of errors relied upon by them.

(Signed) D. SWEGG,
GEO. T. BAGGS and
R. F. GAINES,

As Attorneys for Appellants and Defendants Hans
B. Knudsen and Caroline Knudsen.

Dated November —, 1916.

**Memorandum of Bourquin, J., Re Petition for
Appeal.**

And now, to wit, on November —, 1916, it is
ORDERED that the appeal be allowed as prayed
for.

District Judge.

The law allows appeals from “final decisions.”
The order of this Court striking matter from peti-
tioners’ answer is interlocutory only and not final.
Hence, it can be reviewed on appeal from final deci-
sion or decree *future* made, no appeal lies from said
order, and so should not in form be allowed.

BOURQUIN, J.

[Endorsed]: Filed Nov. 9, 1916. Geo. W. Sproule,
Clerk. By Harry H. Walker, Deputy Clerk.

[139]

Thereafter, on November 9, 1916, an Assignment of Errors was duly filed herein by defendants Hans B. Knudsen and Caroline Knudsen, in the words and figures following, to wit: [140]

*In the District Court of the United States District
of Montana.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees,

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in
Bankruptcy of BITTER ROOT VALLEY
IRRIGATION COMPANY, HANS B.
KNUDSEN, CAROLINE KNUDSEN,
ELLEN E. CARTER, MAX BENNETT,
HENRY BENNETT, JOSEPH ZITKA and
W. G. PARKS,

Defendants.

Assignment of Errors.

Defendants and appellants Hans B. Knudsen and Caroline Knudsen above named in connection with

their petition for the allowance of appeal in this cause hereby specify the following particulars wherein error was committed in this said cause:

ERRORS OF LAW.

I.

The Court erred in sustaining motion of complainants and appellees First Trust and Savings Bank and Emile K. Boisot, Trustees, said motion being filed under date of September 12, 1916, to strike from the answer of said appellants and defendants, which said answer was filed September 4, 1916, all that portion thereof described as follows: "That portion thereof embraced within paragraph V [141] the matters so contained in said paragraph V being subdivided into paragraphs or clauses numbered 1, 2, 3, 4, 5, 6 and 7, and being that portion of said answer of said defendants wherein is alleged and set forth the institution and pendency of a certain action in the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli, and challenging the jurisdiction of this Court to hear, adjudicate and determine the matters and things therein alleged to be before the State Court for adjudication and determination, and being further described as the portion of said answer wherein and whereby said appellants and defendants sought to plead facts demanding a stay of proceedings by this court pending the determination of the action pending in the aforesaid State Court.

II.

The Court erred, by sustaining the aforesaid mo-

tion to strike, in declining to hear and adjudicate the questions presented by the aforesaid plea.

WHEREFORE defendants and appellants above named, pray that the petition for the allowance of an appeal be granted, and that for the reason aforesaid and for divers and sundry other reasons the order and decree entered herein on the 16th day of October, 1916, be reversed.

(Signed) D. S. WEGG,
GEO. T. BAGGS and
R. F. GAINES,

As Attorneys for Defendants and Appellants Hans
B. Knudsen and Caroline Knudsen.

[Endorsed]: In Equity. Filed Nov. 9, 1916.
Geo. W. Sproule, Clerk. By (Signed) Harry H.
Walker, Deputy Clerk. [142]

Thereafter, on November 21, 1916, there was duly filed herein a certified copy of a Petition for Allowance of Appeal of defendants Hans B. Knudsen and Caroline Knudsen, filed Nov. 16, 1916, in the United States Circuit Court of Appeals for the Ninth Circuit, together with a copy of the order of said Court allowing said appeal, which said Petition and Order are in the words and figures following, to wit:

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees,

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in
Bankruptcy of BITTER ROOT VALLEY
IRRIGATION COMPANY, HANS B.
KNUDSEN, CAROLINE KNUDSEN,
ELLEN E. CARTER, MAX BENNETT,
HENRY BENNETT, JOSEPH ZITKA and
W. G. PARKS,

Defendants.

Petition for Allowance of Appeal. [143]

Hans B. Knudsen and Caroline Knudsen respect-
fully show to the above-entitled court that under
date of October 16, 1916, there was made by the
District Court of the United States for the District
of Montana, a certain order and decree in the above-
entitled proceeding whereby there was upon motion

of appellees and complainants, First Trust and Savings Bank and Emile K. Boisot, Trustees, stricken from the answer of said Hans B. Knudsen and Caroline Knudsen the portion thereof which pleaded the prior acquisition by the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli, of jurisdiction over the parties and *res* involved in this action, and thereafter conceiving themselves aggrieved by said order and decree, they did file in said District Court of the United States for the District of Montana, their certain petition for the allowance of an appeal of their assignment of errors in connection therewith, and thereafter presented the same to the Judge of said court, who denied said petition and refused to allow an appeal from said order;

Wherefore, conceiving themselves entitled thereto and being aggrieved as aforesaid by the making of the above-mentioned order and decree, do hereby appeal from said order and decree to the Circuit Court of Appeals of the United States, Ninth Circuit, and do hereby petition and pray for the allowance of this appeal and that a Citation may issue in connection therewith; and do further pray that a transcript of the records and proceedings and papers upon which said order and decree was made, duly prepared and authenticated, may be sent to said Circuit Court of Appeals of the United States for the Ninth Circuit at San Francisco, California; and that the penalty of an appropriate bond on appeal may be fixed upon the allowance of such appeal.

Said petitioners and appellants file and present herewith their assignment of errors relied upon.

R. F. GAINES,

As Attorney and Solicitor for Appellants and Defendants Hans B. Knudsen and Caroline Knudsen.

Dated November 16, 1916.

Order Allowing Appeal and Fixing Amount of Bond.

And now, to wit, on November 16, 1916, after due consideration of the foregoing petition, it is ordered that the appeal be allowed as prayed for and that appellants furnish in connection therewith a bond in proper form, the penalty whereof is hereby fixed at the sum of \$300.

WILLIAM H. HUNT,

As Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Petition for Allowance of Appeal and Order Allowing the Same. Filed Nov. 16, 1916. F. D. Monckton, Clerk. [145]

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2878.

HANS B. KNUDSEN and CAROLINE KNUDSEN,
Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,
Appellees.

**Certificate of Clerk U. S. Circuit Court of Appeals
to Petition for Allowance of Appeal, Order
Allowing Appeal and Fixing Amount of Bond.**

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three (3) pages, numbered from and including 1 to and including three, to be a full, true and correct copy of Petition for Allowance of Appeal, Order Allowing Appeal and fixing amount of bond, filed in the above-entitled cause on the 16th day of November, A. D. 1916, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of November, A. D. 1916.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Title of Court and Cause. Certified Copy of Petition for Allowance of Appeal, Order Allowing Appeal and Fixing Amount of Bond. Filed Nov. 21, 1916. Geo. W. Sproule, Clerk. [146]

Thereafter, on Dec. 9, 1916, a praecipe for transcript on appeal was duly filed herein, in the words and figures following, to wit:

*In the District Court of the United States, District
Montana.*

No. 71—IN EQUITY.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, et al.,

Defendants.

**Praecipe for Portions of Record to be Incorporated
in the Transcript on Appeal on Behalf of Hans B.
Knudsen and Caroline Knudsen.**

To Geo. W. Sproule, Clerk of the United States Dis-
trict Court, Helena, Montana.

Sir: You will kindly prepare and certify to a transcript or record on appeal in connection with appeal from an order made in the above-styled court and cause under date of October 16, 1916, which said order struck from the answer of Hans B. Knudsen and Caroline Knudsen certain portions thereof, appeal therefrom having been allowed by and out of the United States Circuit Court of Appeals for the Ninth Circuit, under date of November 16, 1916. Portions of paper or papers designated as follows:

(a) All portions of the bill of complaint filed by

plaintiffs in the above cause, save and except certain portions thereof being particularly described as follows:

The description contained in paragraph 1 commencing on page 8 of said bill of complaint and continuing to page 16 thereof.

The description contained in paragraph 2 of said bill of complaint and commencing on page 16 thereof and continuing to page 17. [147]

The description contained in paragraph 3, commencing on page 18 and continuing to page 20.

The description contained in paragraph 4, pages 20 to 22 thereof.

The description contained in paragraph 5, pages 22 to 25 thereof.

The description contained in paragraph VI, pages 88 and 89.

The description contained in paragraph VII, pages 89 to 95 thereof.

The description contained in paragraph VIII, pages 95 to 112 thereof.

The description contained in paragraph IX, pages 112 to 114 thereof.

The description contained in paragraph X, pages 114 to 140 thereof.

The description contained in paragraph XI, pages 140 to line 33 of page 176.

The description contained in paragraph XIII, pages 177 to 209.

And in lieu of omitted descriptions above-mentioned insert in each instance the following: "Here follows description of property."

(b) Answer of defendants Hans B. Knudsen and Caroline Knudsen filed in said cause under date of September 4, 1916.

(c) Motion to strike portions of said answer filed by complainants in this cause under date of September 12, 1912.

(d) Copy of order of court in memo form sustaining aforesaid motion made and filed under date of October 16, 1916.

(e) Minute entry in connection with order sustaining said motion, made under date of October 16th, 1916.

(f) Petition praying for allowance of appeal filed in said court and cause by Hans B. Knudsen and Caroline Knudsen under date of November 9, 1916.

(g) Assignment of errors filed in the above court and cause in connection with petition for allowance of appeal under date of November 9, 1916. [148]

(h) Certified copy of order allowing appeal made by the Honorable William H. Hunt, under date of November 16, 1916.

(i) Citation on appeal issued by the Honorable William H. Hunt, under date of November 16, 1916.

(j) Praecipe for transcript of record.

And you are further hereby requested to attach thereto your certificate in usual form, forwarding the same as required by law for printing, filing and docketing in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated December 8, 1916.

GEO. T. BAGGS,
D. S. WEGG,
R. F. GAINES,

As Attorneys for Defendants and Appellants Hans
B. Knudsen and Caroline Knudsen.

[Endorsed]: Title of Court and Cause. Praeipie
for Transcript. Filed Dec. 9, 1916. Geo. W.
Sproule, Clerk. [149]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States
District Court for the District of Montana, do hereby
certify and return to the Honorable, The United
States Circuit Court of Appeals for the Ninth Cir-
cuit, that the foregoing volume, consisting of 149
pages numbered consecutively from 1 to 149, inclu-
sive, is a full, true, correct and compared transcript
of the pleadings, orders and decision and all other
proceedings in said cause required to be incorporated
in the record on appeal therein by the praecipe of
the appellants for said record on appeal, except the
Citation mentioned in said praecipe which is not a
record of said District Court, including said prae-
cipe, and of the whole thereof, as appears from the
original records and files of said court in my posses-
sion as such clerk.

I further certify that the costs of the transcript of record amount to the sum of Fifty-nine & no/100 Dollars (\$59.00), and have been paid by the appellants.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this 13th day of December, A. D. 1916.

[Seal]

GEO. W. SPROULE,
Clerk. [150]

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust and Savings Bank and Emile K. Boisot, Trustees, Appellees. Transcript of the Record. Upon appeal from the United States District Court for the District of Montana.

Filed December 18, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT,

Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in Bank-
ruptcy of BITTER ROOT VALLEY IRRI-
GATION COMPANY, HANS B. KNUD-
SEN, CAROLINE KNUDSEN, ELLEN E.
CARTER, MAX BENNETT, HENRY BEN-
NET, JOSEPH ZITKA and W. G. PARKS,

Defendants.

**Petition to U. S. Circuit Court of Appeals for
Allowance of Appeal.**

Hans B. Knudsen and Caroline Knudsen respect-
fully show to the above-entitled court that under
date of October 16, 1916, there was made by the
District Court of the United States for the District
of Montana a certain order and decree in the above-

entitled proceeding whereby there was upon motion of appellees and complainants, First Trust and Savings Bank and Emile K. Boisot, Trustees, stricken from the answer of said Hans B. Knudsen and Caroline Knudsen the portion thereof which pleaded the prior acquisition by the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli of jurisdiction over the parties and *res* involved in this action and thereafter conceiving themselves aggrieved by said order and decree they did file in said District Court of the United States for the District of Montana their certain petition for the allowance of an appeal of their assignment of errors in connection therewith, and thereafter presented the same to the Judge of said court, who denied said petition and refused to allow an appeal from said order:

Wherefore, conceiving themselves entitled thereto and being aggrieved as aforesaid by the making of the above-mentioned order and decree, do hereby appeal from said order and decree to the Circuit Court of Appeals of the United States, Ninth Circuit, and do hereby petition and pray for the allowance of this appeal and that a citation may issue in connection therewith; and do further pray that a transcript of the records and proceedings and papers upon which said order and decree was made, duly prepared and authenticated, may be sent to said Circuit Court of Appeals of the United States for the Ninth Circuit at San Francisco, California; and that the penalty of an appropriate bond on appeal may be fixed upon the allowance of such appeal.

Said petitioners and appellants file and present herewith their assignment of errors relied upon.

R. F. GAINES,

As Attorney and Solicitor for Appellants and Defendants Hans B. Knudsen and Caroline Knudsen.

Dated November 16th, 1916.

Order Allowing Appeal and Fixing Amount of Bond.

And now, to wit, on November 16, 1916, after due consideration of the foregoing petition, it is ordered that the appeal be allowed as prayed for and that appellants furnish in connection therewith a bond in proper form, the penalty whereof is hereby fixed at the sum of \$300.

WILLIAM H. HUNT,

As Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust & Savings Bank and Emile K. Boisot, Appellees. Petition for Allowance of Appeal and Order Allowing Same. Filed Nov. 16, 1916. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

HANS B. KNUDSEN AND CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Complainants,

vs.

BITTER ROOT VALLEY IRRIGATION COM-
PANY, F. C. WEBSTER, Trustee in Bank-
ruptcy of Bitter Root Valley Irrigation Com-
pany, HANS B. KNUDSEN, CAROLINE
KNUDSEN, ELLEN E. CARTER, MAX
BENNETT, HENRY BENNETT, JOSEPH
ZITKA and W. G. PARKS,

Defendants.

Assignment of Errors.

Defendants and appellants Hans B. Knudsen and Caroline Knudsen above named in connection with their petition for the allowance of appeal in this cause hereby specify the following particulars wherein error was committed in this said cause:

ERRORS OF LAW.

I.

The District Court of the United States for the District of Montana erred in sustaining motion of complainants and appellees First Trust and Savings Bank and Emile K. Boisot, Trustees, said motion being filed under date of September 12, 1916, to strike from the answer of said appellants and defendants, which said answer was filed September 4, 1916, all that portion thereof described as follows: "That portion thereof embraced within Paragraph V, the matters so contained in said paragraph V being subdivided into paragraphs or clauses numbered 1, 2, 3, 4, 5 and 6, and being that portion of said answer of said defendants wherein is alleged and set forth the institution and pendency of a certain action in the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Ravalli, and challenging the jurisdiction of said court to hear, adjudicate and determine the matters and things therein alleged to be before the State Court for adjudication and determination, and being further described as the portion of said answer wherein and whereby said appellants and defendants sought to plead facts demanding a stay of proceedings by this court pending the determination of the action pending in the aforesaid State Court.

II.

The said Court erred by sustaining the aforesaid motion to strike, in declining to hear and adjudicate the questions presented by the aforesaid plea.

WHEREFORE, defendants and appellants above named, pray that their petition for the allowance of an appeal be granted and that for the reasons aforesaid and for divers and sundry other reasons the order and decree entered in said court on the 16th day of October, 1916, be reversed.

R. F. GAINES,

As Attorney and Solicitor for Defendants and Appellants Hans B. Knudsen and Caroline Knudsen.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust & Savings Bank and Emile K. Boisot, Trustees, Appellees. Assignment of Errors. Filed Nov. 16, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

HANS B. KNUDSEN and CAROLINE KNUDSEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and EMILE K. BOISOT, Trustees,

Appellees.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That Hans B. Knudsen and Caroline Knudsen as principals and American Surety Company of New

York, a surety company, duly authorized by compliance with the laws of the State of Montana, to act as surety upon bonds and undertakings required by law, as surety are held and firmly bound unto First Trust and Savings Bank and Emile K. Boisot, Trustees, in the full and just sum of Three Hundred (\$300) Dollars to be paid to said First Trust and Savings Bank and Emile K. Boisot, Trustees, their certain attorneys, executors, administrators, successors or assigns, for which payment well and truly to be made, we bind ourselves, our executors, administrators and successors jointly and severally firmly by these presents.

Scaled and dated this 24th day of November, in the year of our Lord nineteen hundred sixteen.

WHEREAS, lately at a District Court of the United States in a suit pending in said court between First Trust and Savings Bank and Emile K. Boisot, Trustees, as complainants, and Hans B. Knudsen and Caroline Knudsen and others as defendants, an order and decree was rendered against said Hans B. Knudsen and Caroline Knudsen, and said Hans B. Knudsen and Caroline Knudsen have obtained an appeal and filed a copy thereof in the clerk's office of said court, and in the United States Circuit Court of Appeals for the Ninth Circuit, and to reverse the decree in the aforesaid District Court of the United States for the District of Montana, and a citation has issued directed to said First Trust and Savings Bank and Emile K. Boisot, trustees, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for

the Ninth Circuit to be holden at the City of San Francisco in said circuit, within thirty days from the 16th day of November, 1916, then and there to show cause, if any there be, why the decree rendered against the said Hans B. Knudsen and said Caroline Knudsen should not be corrected and why speedy justice should not be done to the parties in that behalf.

NOW, the condition of the above obligation is such that if said Hans B. Knudsen and Caroline Knudsen shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation is void; otherwise to remain in full force and virtue.

HANS B. KNUDSEN and
CAROLINE KNUDSEN,

By R. F. GAINES,

As Their Attorney Hereto Duly Authorized.

[Seal] AMERICAN SURETY COMPANY OF
NEW YORK,

By TED E. CALLISON,
Resident Vice-president.

Attest: J. R. C. SINE, Jr.,

As Its Resident Assistant Secretary Hereto.

Attest:

_____ ,

As Its ——— Hereto Duly Authorized.

The foregoing bond as to form and sufficiency of surety is hereby approved this 28th day of November, 1916.

WM. H. HUNT,
Judge Circuit Court of Appeals, Ninth Circuit.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust and Savings Bank and Emile K. Boisot, Trustees, Appellees. Bond on Appeal. Filed Nov, 28, 1916. F. D. Monckton, Clerk.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to The First Trust and Savings Bank and Emile K. Boisot, Trustees, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the United States District Court for the ——— District of Montana, and also filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, Order Allowing such appeal being of record in said last-named office, wherein Hans B. Knudsen and Caroline Knudsen, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT, United States Circuit Judge for the Ninth Circuit, this 16th day of November, A. D. 1916.

WILLIAM H. HUNT,
United States Circuit Judge.

Received copies of above Citation this 24th day of November, A. D. 1916, at Chicago, Illinois.

WINSTON PAYNE.
STRAWN & SHAW,
GARRARD B. WINSTON.

United States of America,
State of Illinois, County of Cook,—ss.

On this 24th day of November, in the year of our Lord one thousand nine hundred and sixteen, personally appeared before me, Ernest A. Baughman, the subscriber, and makes oath that he delivered a true copy of the within citation to First Trust & Savings Bank, Trustee, a corporation, by delivering the same to Emile K. Boisot, the President thereof; also delivered a true copy to Emile K. Boisot, as trustee; also delivered a true copy to Messrs. Winston, Payne, Strawn & Shaw; and also delivered a true copy to Garrard B. Winston, of Counsel; all at Chicago, Illinois.

ERNEST A. BAUGHMAN.

Subscribed and sworn to before me at Chicago, Illinois, this 24th day of November, A. D. 1916.

[Seal] L. W. MAY,
Notary Public in and for Cook County, Illinois.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B.

Knudsen and Caroline Knudsen, Appellants, vs. First Trust & Savings Bank and Emile K. Boisot, Trustees. Citation on Appeal. Filed Dec. 1, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

HANS B. KNUDSEN and CAROLINE KNUDSEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and EMILE K. BOISOT, Trustees,

Appellees.

Order Extending Time to January 4, 1917, to File Record and Docket Cause.

The request of Hans B. Knudsen and Caroline Knudsen appellants above named for an extension or enlargement of the time for the filing of the record on appeal in connection with the above matter and the docketing of said cause having been presented to the undersigned, a judge of the United States Court of Appeals for the Ninth Circuit, and good cause therefor appearing, it is ordered that the time for the filing of said record and the docketing of said cause shall be extended and enlarged so as to run to and inclusive of January 4th, 1917.

Dated December 1st, 1916.

WM. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust & Savings Bank and Emile K. Boisot, Trustees, Appellees. Order. Filed Dec. 1, 1916. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees.

Praecipe for Certified Copy of Record on Appeal.

To F. D. Monckton, Esq., Clerk of the Above-styled
Court:

As a part and portion of the transcript on appeal in the above cause, you are hereby requested to furnish under your certificate papers as follows:

(a) Petition for allowance of appeal filed in the above Court under date of November 16, 1916.

(b) Assignment of errors in connection with the aforesaid petition, also filed under date of November 16, 1916.

(c) Order allowing appeal as prayed for, said order being made under date of November 16, 1916.

(d) Citation on appeal issued under date of November 16, 1916.

(e) Undertaking on appeal filed in said cause.

(f) Praecipe for transcript of record.

Dated December 8, 1916.

R. F. GAINES,

As Attorney and Counsel for Appellants.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust and Savings Bank and Emile K. Boisot, Trustees, Appellees. Praecipe for Certified Copy of Record on Appeal. Filed Dec. 11, 1916. F. D. Monckton. Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

HANS B. KNUDSEN and CAROLINE KNUD-
SEN,

Appellants,

vs.

FIRST TRUST AND SAVINGS BANK and
EMILE K. BOISOT, Trustees,

Appellees.

**Acceptance of Service of Praecipe for Portions of
Record on Appeal.**

Service and receipt of copy of praecipe for portions of record on appeal in connection with appeal of Hans B. Knudsen and Caroline Knudsen from Order of October 16, 1916, in the above matter admitted this 9th day of December, 1916.

HENRY C. STIFF,

Of Counsel for First Trust and Savings Bank and Emile K. Boisot, Trustees.

[Endorsed]: No. 2878. United States Circuit Court of Appeals for the Ninth Circuit. Hans B. Knudsen and Caroline Knudsen, Appellants, vs. First Trust and Savings Bank and Emile K. Boisot, Trustees, Appellees. Acceptance of Service. Filed Dec. 14, 1916. F. D. Monckton, Clerk.

